

Deposition of David DeYoung - March 3, 2014

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

STIFEL NICOLAUS & COMPANY, INC.,  
STIFEL FINANCIAL CORP.,  
SAYBROOK FUND INVESTORS, LLC  
(successor to SAYBROOK TAX EXEMPT  
INVESTORS, LLC),  
LDF ACQUISITION, LLC,  
WELLS FARGO BANK, N.A.,  
and GODFREY & KAHN, S.C.,

Plaintiffs,

vs.

Case No. 13-CV-372

LAC DU FLAMBEAU BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS and  
LAKE OF THE TORCHES ECONOMIC  
DEVELOPMENT CORPORATION,

Defendants.

Deposition of DAVID DeYOUNG

Monday, March 3rd, 2014

1:05 p.m.

at

GASS WEBER MULLINS LLC  
309 North Water Street  
Milwaukee, Wisconsin

Reported by Dawn M. Lahti, RPR/CRR

**Deposition of David DeYoung - March 3, 2014**

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1                   Deposition of DAVID DeYOUNG, a witness in  
2                   the above-entitled action, taken at the instance of  
3                   the Defendants, pursuant to the Federal Rules of  
4                   Civil Procedure, pursuant to notice, before Dawn M.  
5                   Lahti, RPR/CRR and Notary Public, State of  
6                   Wisconsin, at 309 North Water Street, Milwaukee,  
7                   Wisconsin, on the 3rd day of March, 2014,  
8                   commencing at 1:05 p.m. and concluding at 5:15 p.m.

9       A P P E A R A N C E S:

10                   GASS WEBER MULLINS LLC, by  
11                   Mr. David J. Turek  
12                   309 North Water Street  
13                   Milwaukee, Wisconsin 53202  
14                   Appeared on behalf of Plaintiffs  
15                   Stifel Nicolaus & Company, Inc.  
16                   and Stifel Financial Corp.

17                   GRIPPO & ELDEN, by  
18                   Mr. Daniel R. Fine  
19                   111 South Wacker Drive  
20                   Chicago, Illinois 60606  
21                   Appeared on behalf of Plaintiffs  
22                   Saybrook Fund Investors, LLC  
23                   (successor to Saybrook Tax Exempt  
24                   Investors, LLC), LDF Acquisition, LLC,  
25                   Wells Fargo Bank, N.A.

                 FOLEY & LARDNER LLP, by  
                 Mr. James R. Clark  
                 777 East Wisconsin Avenue  
                 Milwaukee, Wisconsin 53202  
                 Appeared on behalf of Plaintiff  
                 Godfrey & Kahn.

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1 A P P E A R A N C E S (cont'd):

2  
3 HANSEN REYNOLDS DICKINSON CRUEGER LLC, by  
4 Mr. Timothy M. Hansen  
5 Mr. Paul R. Jacquart  
6 316 North Milwaukee Street, Suite 200  
7 Milwaukee, Wisconsin 53202  
8 Appeared on behalf of the Defendants.  
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(Original exhibits attached to original transcript.  
Copies of exhibits attached to copies of transcript.)

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1 TRANSCRIPT OF PROCEEDINGS

2 DAVID DeYOUNG, called as a witness  
3 herein, having been first duly sworn on oath, was  
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. HANSEN:

7 Q Good afternoon, Mr. DeYoung. Could you state your  
8 name for the record, please?

9 A David DeYoung.

10 Q And your address?

11 A 1305 Lookout Drive in Waukesha, Wisconsin.

12 Q Where do you work?

13 A Stifel Nicolaus & Company.

14 Q What do you do there?

15 A Currently I'm a senior vice president and managing  
16 director in their public finance department.

17 Q What does your job entail? What do you do with  
18 that title?

19 A It involves representing the firm in new issue bond  
20 issues either as a financial advisor to one of the  
21 parties, as a placement agent between buyer and  
22 seller or as an underwriter of securities for  
23 resale to the public.

24 Q Who is your direct supervisor?

25 A My direct supervisor is Peter Czajkowski in

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1 St. Louis.

2 Q What's his title?

3 A He is the manager of public finance.

4 Q And forgive me if I missed this. You say it's  
5 Stifel Nicolaus or Stifel Financial?

6 A Stifel Nicolaus.

7 Q Are you here today to testify on behalf of Stifel  
8 Nicolaus and Stifel Financial?

9 A That's my understanding.

10 Q Your role, where does it fall in the hierarchy of  
11 Stifel positions? Is it a CEO and then on down or  
12 how -- describe a little bit the organizational  
13 structure where you fit in.

14 A It's a typical corporate structure, yes. We have a  
15 CEO, a CFO. We are divided into functional  
16 operational areas. At Stifel Nicolaus you'll find  
17 that I am in what's referred to as the fixed income  
18 division which means that I'm not involved in  
19 equity, securities or transactions like that.

20 We also have areas that cover  
21 compliance and legal, et cetera. But I have always  
22 functioned since I joined Stifel in the fixed  
23 income area, and the municipal bond area is a  
24 subset of that.

25 Q How long have you held your current position?

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1 A Since April of 2007.

2 Q What did you do -- what was your title immediately  
3 before April 2007?

4 A I was manager of public finance for Griffin, Kubik,  
5 Stephens & Thompson in Milwaukee.

6 Q So you started -- did you start with Stifel in  
7 2007?

8 A Yes. I joined Stifel in April of 2007.

9 (Exhibit 17 was marked for  
10 identification.)

11 BY MR. HANSEN:

12 Q Mr. DeYoung, I'm handing you what's been marked as  
13 Exhibit 17. Have you seen that document before?

14 A I have.

15 Q And I'll represent to you that this is the 30(b)(6)  
16 notice that we sent over to your attorneys. If you  
17 look on page 2 and 3, it sets out matters for  
18 examination. Do you see where that is there?

19 A Yes.

20 Q And there are five of them, correct?

21 A Yes, there are.

22 Q And have you read all five?

23 A I have.

24 Q And are you prepared to testify today on -- about  
25 all of those five matters for examination --

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1 A Yes.

2 Q -- on -- and for Stifel Nicolaus & Company,  
3 correct?

4 A Yes.

5 (Exhibit 18 was marked for  
6 identification.)

7 BY MR. HANSEN:

8 Q I'll hand you what's been marked as Exhibit 18.  
9 Just in the interest of completeness this is  
10 essentially an identical notice, but this is to  
11 Stifel Financial as opposed to Stifel Nicolaus.

12 You've seen all five of these  
13 matters for examination as well?

14 A I have.

15 Q Have you been deposed before?

16 A In my life, yes.

17 Q Usually we go over some of the ground rules just to  
18 make sure we have a clean record. So the court  
19 reporter can only take down verbal responses and  
20 verbal questions from me. And she can only record  
21 one of us at a time. Do you understand that?

22 A I do.

23 Q So as conversations evolve, people start to  
24 anticipate where folks are going. Sometimes we cut  
25 each other off. I'll try to do my best to answer a



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1 question and give you time to answer and let you  
2 finish answering before I continue. And if you do  
3 the same, it will be a lot easier on Dawn. Okay?

4 A (Nods.)

5 Q You have to say yes.

6 A Yes.

7 Q It's already started. If you have a question or  
8 don't understand any of my questions, let me know,  
9 and I'll try to clarify it or have the reporter  
10 read it back. If you do answer, I'll assume you  
11 understood the question. Okay?

12 A That would be fine.

13 Q If you need to take a break or get up, whatever you  
14 need to do, just let me know. All right?

15 A Yes.

16 Q So in preparing for today's deposition, which  
17 relate again to the matters for examination on  
18 [Exhibit 17](#) and 18, what did you do to prepare?

19 A I met with counsel here at Gass Weber: Dave Turek,  
20 Brian Cahill, had some discussions with former  
21 employees, Kevin Shibilski.

22 Q Anyone aside from Kevin Shibilski?

23 A I'm trying to recall. Yes, Mike Schinzer,  
24 salesman.

25 Q Anyone else at Stifel? And when I say Stifel, I'm

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1 referring to either Stifel Nicolaus or Stifel  
2 Financial unless I indicate otherwise. Okay?

3 A There have also been discussions with our general  
4 counsel's office.

5 Q And I don't want to know about those.

6 A Okay.

7 Q I'm thinking more of folks that were involved in  
8 the -- what we'll get into in a minute, this  
9 underlying bond transaction.

10 Did you talk to anyone else about  
11 that?

12 A No.

13 Q What documents did you review in preparation for  
14 today?

15 A The bond purchase agreement, the limited offering  
16 memorandum. There were e-mail correspondence, and  
17 there were also some -- there was some written  
18 agreements involved by both the -- Stifel Nicolaus  
19 was a party to as well as -- I don't recall  
20 exactly. I had access to a transcript of all the  
21 documents, but the ones that were the focus of my  
22 attention in preparation for today were those.

23 Q Those three -- you said bond purchase agreement,  
24 limited offering memorandum, e-mail correspondence,  
25 and you said written agreements with Stifel.

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1 Are those different from the bond  
2 purchase agreement?

3 A Yeah, because we had -- there were other  
4 correspondence that weren't transcript documents.

5 Q When you say transcript documents, what do you  
6 mean?

7 A Documents that were included in the transcript that  
8 were necessary for closing.

9 Q When you say transcript, you're not talking about a  
10 transcript of a deposition or a legal proceeding?

11 A I'm talking about a bond closing transcript.

12 Q Got you. What were those written agreements?

13 A There was an authorization to proceed that we  
14 received in writing from the tribe at one point.

15 Q Did you bring any of the documents with you today?

16 A No.

17 Q What is the relationship between Stifel Nicolaus  
18 and Stifel Financial?

19 A Stifel Nicolaus & Company is a wholly owned  
20 subsidiary of Stifel Financial.

21 Q I'd like to talk to you a little bit about some  
22 specific folks, two of whom you mentioned already.  
23 Kevin Shibilski, what -- at the time of the bond  
24 transaction, I'm talking about let's say middle of  
25 '07 to middle of '08, what was Kevin Shibilski's

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1 job title?

2 A Kevin, I believe, was vice president. He reported  
3 to me.

4 Q At that time?

5 A At that time.

6 Q You said vice president?

7 A Yes.

8 Q Of what?

9 A Public finance.

10 Q And what were his dates of employment?

11 A I am not sure. Kevin had a brief break in  
12 employment, so I don't know if it was continuous.  
13 I have to ask a clarification question. From what  
14 period of time?

15 Q I'm thinking of a time when I think David Noack  
16 terminated Kevin Shibilski, and then David left,  
17 and Stifel rehired Mr. Shibilski. I just want to  
18 understand the chronology there, roughly when that  
19 happened.

20 A My understanding is -- sometime in 2003 my  
21 understanding is that Kevin was hired by David  
22 Noack. He worked with Stifel continuously until  
23 early 2007. At that point Kevin was terminated,  
24 and Mr. Noack also left the firm. Kevin was  
25 rehired by Stifel after a short period of time also

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1 in 2007, and it would have been at some point prior  
2 to April because Kevin was back in the office when  
3 I started in April 2007.

4 Q Do you know why Mr. Shibilski was fired?

5 A No.

6 Q Do you know why Mr. Noack left?

7 A Yes.

8 Q Why?

9 A I was led to believe that there was a dispute over  
10 bonus distribution in early 2007 over production  
11 and performance in 2006.

12 Q Did any of that performance production bonus  
13 dispute relate in any way to the bond transaction  
14 that is the subject of this lawsuit?

15 A No.

16 Q Same period of time. What was David Noack's  
17 position, job description and date of employment?

18 A Date of employment I do not know. Job description,  
19 he was managing Wisconsin public finance, and  
20 that's what he was hired to do, and he did that  
21 from the time he started to the time he left in  
22 early 2007.

23 Q Was he -- was he Kevin Shibilski's superior?

24 A Yes.

25 Q Same kind of questions about Michael Schinzer.

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1 Title, job description, dates of employment.

2 A Michael Schinzer is an institutional salesman for  
3 Stifel Nicolaus & Company. He works in a different  
4 department. He works in investment sales, and he's  
5 been with the firm for some time, though I don't  
6 know exactly the length of Mike's employment.

7 Q Where does the institutional salesman position fall  
8 in the hierarchy of things if you're in charge  
9 of -- if you're above Noack, Noack is above  
10 Shibilski, are they both above Schinzer?

11 MR. TUREK: I'm going to object to the  
12 extent it mischaracterizes, but go ahead -- the  
13 premise of the question. Go ahead, Dave.

14 THE WITNESS: No. Institutional sales  
15 is, for lack of a better description, a separate  
16 silo in the organizational chart to public finance.  
17 So Mike reports to a sales manager and -- but we  
18 are separate silos.

19 In other words, I report to Peter  
20 Czajkowski. There are no circumstances under which  
21 Mike Schinzer would report to Peter Czajkowski.

22 BY MR. HANSEN:

23 Q What about Brian Lehky, L-E-H-K-Y?

24 A Lehky.

25 Q Lehky, sorry, Brian. What is his title during this

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1 middle '06 to middle '08 time period?

2 A I don't know exactly what Brian's title was. I  
3 didn't go back to check. His function was as a --  
4 we refer to him as an analyst which meant that  
5 he -- he both ran numbers for us and also did  
6 credit investigation for us.

7 Q Is he still employed by Stifel?

8 A He is not.

9 Q Do you know when he left?

10 A Don't know the exact date. I believe it was in  
11 2009.

12 Q Do you know why he left?

13 A He received the offer of a position from Dana  
14 Investments.

15 Q What about Mr. Schinzer, is he still with Stifel?

16 A He is.

17 Q How about Paul Patrie, P-A-T-R-I-E?

18 A Paul Patrie was also vice president, also in public  
19 finance, and he reported to me. He would be on the  
20 organizational chart as Kevin Shibilski's  
21 colleague.

22 Q When was the first time Stifel began working with  
23 the Lac du Flambeau tribe?

24 A First contact, I do not know.

25 Q Who at Stifel would know that?

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1 A At Stifel presently, I can't think of anyone who  
2 would know that for certain.

3 Q Who would be the most knowledgeable person in  
4 general about that?

5 A It would be David Noack. It is most likely that he  
6 was the original contact.

7 Q What was the first -- what was the nature of the  
8 work that Stifel first performed for the  
9 Lac du Flambeau tribe?

10 A I've seen references to a transaction that was done  
11 for school purposes that Stifel had some role in.

12 Q Was that in 2004?

13 A I believe so. It was before I came on board, but  
14 there was -- yeah.

15 Q And would that be David Noack's?

16 A That would have been David Noack's work product,  
17 yes.

18 Q What's the next time that Stifel did work for the  
19 Lac du Flambeau tribe?

20 A The next transaction we were engaged to perform  
21 would have been the transaction in question here.

22 Q Did Stifel ever serve as a financial advisor to the  
23 Lac du Flambeau tribe?

24 A Not that I'm aware.

25 Q Is there any contract between any Stifel entity and



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1 any Lac du Flambeau tribal entity other than the  
2 bond purchase agreement?

3 A Not that I'm aware.

4 Q Is there a way to confirm that for sure within  
5 Stifel?

6 A There should be.

7 Q There should be a way to confirm it?

8 A Well, if there was a financial advisory contract as  
9 you indicated, it would have -- we would have  
10 needed to maintain that for regulatory purposes.  
11 I've checked the financial advisory file, and no  
12 such contract is on file there.

13 Q So you don't have any reason to believe that they  
14 did -- Stifel did serve in that capacity?

15 A No, I have no reason to believe they served in that  
16 capacity.

17 Q Even absent a formal agreement like that, the  
18 investment-type contract you just mentioned, are  
19 you aware whether Mr. Noack or Mr. Shibilski  
20 nevertheless provided financial advice to the  
21 Lac du Flambeau tribe or one of its entities?

22 A Not aware of that.

23 Q Would such advice have been permissible in the  
24 absence of a financial-advice-type contract like  
25 you just mentioned?

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1 A At that time, yes, it would have been.

2 Q And what would have permitted it?

3 A It could have essentially -- I need to have a  
4 better understanding as to what you mean by advice.

5 Q What was the name of the contract that you  
6 mentioned that would have -- that you looked for  
7 and that you didn't find?

8 A A financial advisory agreement.

9 Q Financial advisory agreement, okay. What type of  
10 advice would Stifel typically give under such an  
11 agreement?

12 A We would -- at that point we were assisting a  
13 client and evaluating, first of all, projects that  
14 may be undertaken. It would be within the scope of  
15 that agreement that we would also assist them in  
16 evaluating sources of capital, and we would also  
17 advise them on steps that they could be taking to  
18 improve the perception of their credit in the  
19 market either for a rating service or an insurer,  
20 guarantors, letter of credit providers, people of  
21 that ilk.

22 Q I guess so -- let's use that definition.

23 A Okay.

24 Q So when I say advice, let's assume that it's the  
25 advice that typically would have been given under a

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1 financial advisory agreement. Okay?

2 A Um-hum.

3 Q You said at that time such advice would have  
4 been -- let me rephrase that.

5 There would have been no prohibition  
6 from Stifel as an institution on someone like David  
7 Noack or Kevin Shibilski giving the type of advice  
8 one would traditionally give under a financial  
9 advisory agreement, correct?

10 A That's correct.

11 Q What did -- what does the qualifier "at that time"  
12 mean?

13 A Recently Securities and Exchange Commission rules  
14 have changed that have more strictly defined what  
15 constitutes financial advice and prohibits  
16 essentially the provision of that advice outside  
17 the scope of a written agreement.

18 Q And it's your understanding that those prohibitions  
19 were not in place mid-'06 to mid-'08?

20 A They were not in place at that time.

21 Q Even in the absence of regulatory prohibition,  
22 Stifel itself didn't have any of its own  
23 independent prohibitions on that type of advice?

24 A No.

25 Q If Kevin Shibilski or David Noack were giving that

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1 type of advice during that time, is there anyone at  
2 Stifel that they would have been communicating with  
3 about the provision of that advice, or are they  
4 kind of out there? They're in charge of their own  
5 sort of market or client, and that's just what they  
6 do?

7 A Exactly. There was -- there's a lot of  
8 independence provided to our people who are having  
9 direct customer client contact in nurturing that --  
10 facilitating that type of relationship.

11 Q Even in the absence of a rule requiring a written  
12 agreement as is the case now, back at the time that  
13 we're talking about, would the normal rules of  
14 financial advisors to have governed someone like  
15 David Noack or Kevin Shibilski if they were given  
16 advice?

17 A I don't understand that question.

18 Q Sorry. At the time, mid-'06 to mid-'08, even  
19 though there might not have been a rule that said  
20 you have to have a written agreement before you can  
21 give financial advice to a client, if you did  
22 decide to do that, there would still be rules  
23 governing the type of advice and the rules over  
24 that relationship, correct?

25 A Yes.

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1 Q Would those -- if that advice has been given, would  
2 someone in Kevin Shibilski's position have been a  
3 fiduciary to the client to whom they're giving the  
4 advice?

5 A No.

6 Q Why not?

7 A Because at this point our rule had always been  
8 contemplated to be one of a placement agent with  
9 regard to this transaction, and so we were not a  
10 fiduciary to the -- to the tribe.

11 Q In general though if Kevin Shibilski were to decide  
12 to give advice in general to a client at the time,  
13 would he be a fiduciary?

14 A No.

15 MR. TUREK: Object to the extent it calls  
16 for a legal conclusion.

17 MR. HANSEN: I didn't hear the answer.

18 THE WITNESS: The answer is no.

19 BY MR. HANSEN:

20 Q So the only two projects that you're aware of that  
21 Stifel worked on with the LDF tribe was the school  
22 deal in 2004 and this -- the bond transaction that  
23 is the subject of this lawsuit?

24 A That's what I'm aware of.

25 Q Do you know what Mr. Noack or Mr. Shibilski did to

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1 foster the relationship with the Lac du Flambeau  
2 tribe?

3 MR. TUREK: I'm going to object to it  
4 being compound. Go ahead.

5 MR. HANSEN: If you'd prefer to take them  
6 in turn, Kevin Shibilski and then Mr. Noack, that's  
7 fine.

8 THE WITNESS: Not specifically. I assume  
9 that they would be using what were in the industry  
10 normal client development-type contacts. You stay  
11 in touch, give them a phone call, and some  
12 participants in our market are more disciplined in  
13 that than others.

14 I don't know how disciplined David  
15 was, but Kevin I know from experience did a pretty  
16 good job of staying in touch by phone.

17 BY MR. HANSEN:

18 Q Do you know whether apart from the -- what  
19 culminated in the bond transaction whether anyone  
20 from Stifel advised the Lac du Flambeau tribe on  
21 something called the Emerald Star project or  
22 anything related to something called Emerald Star?

23 A I'm not familiar with that.

24 Q Did anyone at Stifel advise the Lac du Flambeau  
25 tribe regarding anything called the Grand

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1           Soleil-Natchez? And Soleil is S-O-L-E-I-L, and  
2           it's a hyphen, and then Natchez, N-A-T-C-H-E-Z.

3    A       Yes.

4    Q       And what was the nature of that advice?

5    A       I didn't characterize it as advice.

6    Q       How would you characterize what happened?

7    A       It's a project that we were introduced to in part  
8           of the conversation of this transaction. Grand  
9           Soleil-Natchez represented a hotel casino  
10          development in Natchez, Mississippi that the tribe  
11          was looking to make an investment in.

12   Q       And what was Stifel's role in anything related to  
13          Grand Soleil-Natchez?

14   A       Stifel, again, was contacted as a potential  
15          facilitator or source of capital for that  
16          investment.

17   Q       Who contacted Stifel about that?

18   A       I don't know who made the original contact. I know  
19          that when I assumed responsibility for the  
20          transaction, my contact was Rick Lindsley most  
21          likely.

22   Q       Does Stifel view the Grand Soleil-Natchez project  
23          as separate and distinct from the bond transaction?

24   A       Yes.

25   Q       Was there a contract between the Lac du Flambeau

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1           tribe and Stifel as it related to Stifel's services  
2           in connection with Grand Soleil-Natchez?

3     A     Not that I've been able to identify.

4     Q     Who from Stifel was involved in the Grand  
5           Soleil-Natchez -- can we call it the Grand  
6           Soleil-Natchez project?

7     A     Sure. As best I understand, Grand Soleil-Natchez  
8           was originally an idea from a gentleman by the name  
9           of Charles Cato. Charles Cato had this site, this  
10          land on the Mississippi River in Natchez,  
11          Mississippi that he felt was suitable for a river  
12          boat, casino and hotel project.

13                   Charles Cato had some customer  
14          relationship with a Stifel Nicolaus broker in  
15          Florida.

16    Q     Do you know who that was?

17    A     I do not recall that individual's name.

18    Q     Can we find that out?

19    A     We can try, yeah. But that -- it was that broker  
20          who then introduced Cato to David Noack as best I  
21          understand, and it was then Mr. Noack who I believe  
22          introduced Mr. Cato to -- and the Natchez project  
23          idea to the tribe.

24    Q     Do you know when that was?

25    A     Looking back in the files, it was probably -- it



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1           may have been as early as late '05. It was most  
2           likely most of the conversation was in '06.

3       Q     What's your understanding of what the -- when you  
4           say introduced it, what was it?

5       A     Well, it would indicate that it was an individual  
6           who had a site in Natchez that they were seeking to  
7           develop for gaming purposes and was looking for a  
8           partner with gaming experience and money.

9                           And it's -- you know, I know that it  
10          was those terms that Mr. Noack talked about this  
11          transaction with the tribe. I don't know who else  
12          he may have talked to about the same transaction.

13       Q     Was it an investment opportunity?

14                       MR. TUREK: "It" being Grand Soleil?

15                       MR. HANSEN: I'm sorry, yeah.

16       BY MR. HANSEN:

17       Q     This Grand Soleil project that Mr. Noack brought to  
18           the Lac du Flambeau tribe, what was he asking them  
19           to do or what was he -- what was the concept behind  
20           those discussions?

21       A     I do not know if it was presented as an investment  
22           or also if they were seeking management and  
23           expertise in both hospitality and gaming.

24       Q     Do you know who Mr. Noack dealt with at  
25           Lac du Flambeau at the time?

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1 A I don't know which tribal officials he was talking  
2 to, no.

3 Q What was the result of that -- the presentation of  
4 the Grand Soleil project by Mr. Noack to  
5 Lac du Flambeau tribe?

6 A By the time we started working on this, the tribe  
7 had made an investment from -- I'm not sure whether  
8 this was purely -- anticipated purely an investment  
9 participation or if there was going to be other  
10 management responsibilities at that point.

11 But yeah, they had provided some  
12 funds to the development of the Grand Soleil  
13 project out of -- I assume from the currently  
14 available funds of the tribe or their development  
15 corp.

16 Q Were the funds a loan, or were they for the  
17 purchase of equity?

18 A I do not know.

19 Q Do you know whether Mr. Noack received a commission  
20 or any other type of compensation for the Grand  
21 Soleil project culminating in some money going from  
22 the tribe to Grand Soleil?

23 A I do not know that.

24 Q Would that be in Stifel's records somewhere?

25 A Again, I don't know that either. We do not have a

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1 record that we were party to a transaction.

2 Q What about the Stifel person in Florida, do you  
3 know whether they received compensation in any form  
4 as a result of the tribe providing money to the  
5 Grand Soleil project?

6 A I don't know.

7 Q Did Stifel remain involved in the Grand Soleil --  
8 excuse me.

9 Did Stifel remain involved with the  
10 Lac du Flambeau tribe and Lac du Flambeau tribe's  
11 dealings with Grand Soleil-Natchez after that  
12 initial payment from the tribe to Grand Soleil?

13 A It was part and parcel of the discussion of this  
14 transaction, so I would say yes.

15 Q Who at Stifel was primarily responsible for that?

16 A At what time?

17 Q From the initial investment that the tribe made in  
18 the Grand Soleil in 2005 forward.

19 A Again, that would have been David Noack for the  
20 term that he was employed at Stifel. Kevin  
21 Shibilski was the lead on that relationship for  
22 that short period of time between the time when  
23 Mr. Noack left and I was recruited and hired, and I  
24 would have picked up responsibility for that  
25 relationship after that point.

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1 Q Were you hired by Stifel specifically to deal with  
2 the Lac du Flambeau tribe and the Grand  
3 Soleil-Natchez project?

4 A No.

5 Q Do you know whether Mr. Noack visited the tribe --  
6 when I say visited the tribe, I mean on reservation  
7 property or on tribe trust land, did he visit there  
8 to -- as part of his dealings with the  
9 Lac du Flambeau tribe and the Grand Soleil-Natchez  
10 project?

11 A From the records I've been able to review, we don't  
12 have any record of that.

13 Q Did anyone from Stifel visit the tribe in  
14 connection with the Grand Soleil-Natchez project?

15 A Not that I know of during that period of time.

16 Q When are you aware of the first visit by anyone  
17 from Stifel to the Lac du Flambeau tribe  
18 physically?

19 A That would have been our meeting of May 29th, 2007.

20 Q What happened at that meeting?

21 A We -- Stifel representatives made a presentation to  
22 tribal officials of our qualifications to execute a  
23 transaction to refinance tribal debt and provide  
24 capital for investment in Natchez.

25 Q Is the May 29, 2007 meeting, is that sort of the

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1 meeting that became what is the bond transaction?

2 A That would have been, yeah, one of the -- that was  
3 the first time that I could find in our records  
4 that we actually laid out with some specificity the  
5 way we envisioned the project budget and in terms  
6 of identifying what debt should be refinanced.

7 My recollection is that at -- in  
8 anticipation of that meeting the tribal official,  
9 Rick Lindsley, indicated that one thing they would  
10 like us to be prepared to discuss was the maximum  
11 amount of bonds that we felt the tribe could  
12 support, that the current tribal casino could  
13 support.

14 And so I know that there was some --  
15 there were some numbers to that effect that  
16 Mr. Lehky put together in anticipation of helping  
17 us to put together that proposal.

18 Q Mr. Lehky was the analyst we talked about earlier  
19 before?

20 A Right.

21 Q And so he was the person who had the expertise to  
22 say, you can afford this much but not this much  
23 based on what was going on --

24 A We discussed credit criteria and how they would be  
25 applied to the casino. He was the guy however with

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1 the facility with the computer program that  
2 basically generated the solution that we were going  
3 to show the tribe.

4 Q Got you. Who from Stifel was at the meeting  
5 May 29, '07?

6 A It was myself. There was Kevin Shibilski, Paul  
7 Patrie, and I know we brought in Mike Hark from our  
8 Denver office in public finance.

9 MR. CLARK: I'm sorry, what was the last  
10 name?

11 THE WITNESS: Hark, H-A-R-K.

12 BY MR. HANSEN:

13 Q And what was the reason to bring Mr. Hark in?

14 A Mr. Hark had particular Indian finance experience,  
15 and he was the individual within the public finance  
16 department at Stifel Nicolaus that had that  
17 experience, and we were competing with David Noack  
18 and Robert W. Baird at that time for this business.

19 We were led to believe this was a  
20 competitive interview, and we knew that David Noack  
21 had already completed some transactions with the  
22 Lac Courte Oreilles Band of Chippewa and was  
23 touting that individual Indian finance experience,  
24 and we felt we needed to counter that with the  
25 person as best we could to that experience at

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1           Stifel in Indian finance. That individual was Mike  
2           Hark.

3       Q     Got it. Do you remember where the presentation  
4           took place?

5       A     In a -- in a large room. I assume a boardroom at  
6           the tribal offices.

7       Q     The tribal center -- the -- was the casino like  
8           across the parking lot?

9       A     Right. It was not the casino. This was at the --  
10          basically the tribal center, the tribal office.

11      Q     Do you remember who from the tribe was there?

12      A     There were about six to 10 people, so it may have  
13          been an entire complement of the tribal council,  
14          and Mr. Lindsley was there also because I recall  
15          him handling introductions.

16      Q     What was the result of that meeting? I assume you  
17          didn't close the deal that day.

18      A     No. The result of the meeting is that we were  
19          contacted by either Mr. Lindsley or Carl Edwards.  
20          The reason for that is that the follow-up contact,  
21          the call was taken by Mr. Shibilski, not myself  
22          because that contact post-meeting occurred on a  
23          weekend, and I was down in Chicago with my wife's  
24          parents for a barbecue, and I wasn't carrying my  
25          cell phone with me at the barbecue.

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1 But the nature of those initial  
2 phone calls were the tribe seeking our -- seeking  
3 that we revise our proposal to reduce the fees that  
4 we quoted in the initial proposal. We stepped into  
5 fee negotiation mode.

6 Q And did those fee negotiations continue with  
7 Mr. Shibilski primarily or yourself?

8 A With Mr. Shibilski primarily, though he ultimately  
9 did track me down to make sure that he wasn't  
10 overstepping his authority, and I gave him  
11 parameters within which we were prepared to  
12 negotiate, and I found out then a day or so later  
13 that he had in fact been able to achieve agreement  
14 with the tribal officials he was talking to.

15 Q How does the compensation work at Stifel? When you  
16 get the fee agreement, do the individual folks that  
17 went up there, yourself and Mr. Shibilski and  
18 Patrie, do they share in some commission or some  
19 kind of fee? How are people compensated?

20 A People are compensated based upon production. It's  
21 not a direct mathematical contribution, and there  
22 is some judgment imposed at the end of the year at  
23 bonus time as to how much that's available in the  
24 compensation pool should be divided to what  
25 individuals, but yes, there was an expectation that



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1 everyone who went up to secure this business would  
2 at some point share in the compensation  
3 commensurate with their contribution to the  
4 project.

5 Q Whose project was it at Stifel? Was it merely your  
6 deal? Was it Kevin's deal?

7 A Kevin was the relationship lead, although I managed  
8 the project, financed it. And that's essentially  
9 the -- one of the differences. And the reason  
10 Kevin was the relationship lead was Kevin covered  
11 northern Wisconsin for us.

12 He lived in Phillips and the -- and  
13 he had a relationship that was developed and  
14 associated with Mr. Noack that predated my coming  
15 into the firm. I didn't see any business reason to  
16 upset that. However, the transaction also  
17 presented some credit questions that were beyond  
18 the scope of Kevin's expertise and experience, and  
19 so I wanted to make sure that on that business  
20 relationship/business transaction that I was the  
21 gatekeeper and the lead on that part of the  
22 relationship.

23 MR. TUREK: Tim, whenever you get to a  
24 breaking spot.

25 MR. HANSEN: Yeah, let's take a break.

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1 (Discussion off the record.)

2 BY MR. HANSEN:

3 Q So we were just talking about this May 29, 2007  
4 meeting and the upshot of it.

5 When was the next time that Stifel  
6 heard from the Lac du Flambeau tribe after that  
7 meeting?

8 MR. TUREK: Just so I'm clear. Other  
9 than what he talked about with fees or it's kind of  
10 completely new now?

11 BY MR. HANSEN:

12 Q Was the next time fees?

13 A Yeah. After we had arrangements on fees, I -- we  
14 didn't keep a phone log, so I don't know exactly.

15 Q What else was there to discuss besides fees?

16 A Then it was the manner in which we would proceed.  
17 At that point I was discussing with Rick Lindsley  
18 how we would move forward and that would have  
19 occurred pretty quickly because they had some  
20 deadlines that they were concerned about.

21 Q The tribe had deadlines?

22 A Yes.

23 Q Was that with respect to debt obligations coming  
24 due, or were there other things?

25 A They had both balloon payments coming due on their

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1 existing debt, and the project in Natchez was also  
2 running low on capital, and Mr. Lindsley made it --  
3 made it clear to us that we wanted to move forward  
4 deliberately to make sure the contractors were  
5 getting paid on a timely basis.

6 Q When was the next time that anyone from Stifel  
7 visited the tribe?

8 A I visited in September. I believe it was  
9 September 25th --

10 Q Just you?

11 A -- is my recollection. Kevin may have met me at  
12 that meeting from Phillips.

13 Q What was that meeting about?

14 A At that meeting we presented to tribal officials an  
15 outline of two different financing structures from  
16 two different firms that had given us expressions  
17 of interest in the transaction.

18 Q Who were those two?

19 A One was Saybrook, and I still cannot recall -- I'm  
20 drawing a blank. It was another institution.

21 Q Dougherty?

22 A No, it wasn't Dougherty. This is one that -- it  
23 was a customer of Pat. Pat Dolan was another  
24 institutional salesman at Stifel that had generated  
25 that individual -- that proposal. I hesitate to

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1 call it a proposal -- that indication of interest.

2 Q Is that documented somewhere, this presentation  
3 that you made or these -- the indication of  
4 interest from Saybrook or Mr. Dolan's firm?

5 A The terms of the indications of interest were  
6 communicated to me verbally through the salesperson  
7 that covered the accounts, Pat Dolan and Mike  
8 Schinzer.

9 Q Schinzer was responsible for the Saybrook interest?

10 A Saybrook was his customer.

11 Q And was the presentation also oral?

12 A I believe so.

13 Q Would this also take place at the same tribal  
14 center we talked about earlier?

15 A I remember, yes, it did.

16 Q Do you remember any of the tribal officials who  
17 were there?

18 A It was a smaller group. I remember that. And  
19 Mr. Lindsley was there, and I believe Vicky Doud  
20 was there, and there may have been a couple or  
21 three other individuals.

22 Q What was discussed at that meeting; you made your  
23 presentation, and what was the reaction?

24 A Well, we laid out for them the -- an outline of the  
25 nature of the Saybrook interest and the nature of

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1 the interest of this other firm and told them that  
2 we needed them to make a decision and give us a  
3 specific authorization to proceed to due diligence  
4 with one firm or the other.

5 Q What were the -- what were the natures of the two  
6 levels of interest or expressions of interest?

7 A The difference between the expressions of interest  
8 that they had to come to grips with is the Saybrook  
9 proposal was for a higher principal amount in terms  
10 of the amount that -- the leverage they were  
11 willing to assume, they were willing to assume a  
12 higher leverage than the alternative proposal,  
13 however their interest rate was likewise higher  
14 than the alternative proposal.

15 Q Do you remember the specifics of those numbers?

16 A I know that Saybrook was -- and their proposal was  
17 at 50 million. It was -- the other proposal was  
18 something less than that and I want to -- and  
19 again, working from memory, it was -- it was a  
20 fairly significant difference. By significant I'd  
21 say the difference was more than \$5 million.

22 Q It could have been 45 million?

23 A It was 45 or less. And Saybrook's interest  
24 proposal was -- they gave again like -- they  
25 gave -- it would be -- they indicated more than

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1 10 percent.

2 Again, until -- you're not going to  
3 get these guys to commit to a rate until they've  
4 completed due diligence, and the other proposal --  
5 initially it wasn't -- didn't want to quote me  
6 anything but for purposes of allowing the tribe to  
7 make a comparison, I pressed Pat Dolan to get his  
8 client to at least give me a number that was going  
9 to be either more or less than 10 percent. And  
10 interestingly enough they indicated that the number  
11 they were thinking of was less than 10 percent.

12 Q And did you have -- when did you follow up then  
13 with the Lac du Flambeau tribe about those two  
14 expressions of interest and which direction to go?

15 A After that meeting I was calling Rick --

16 Q Rick Lindsley?

17 A Rick Lindsley -- normally in response to calls I  
18 was getting from Pat Dolan or Mike Schinzer.

19 Q Because their clients were eager to know?

20 A Their clients were wondering, okay, you present --  
21 what did the tribe decide? And for several weeks  
22 the tribe didn't decide as far as we knew. At  
23 least it had not been relayed to me, and so I  
24 remember communicating with Pat and Mike, and they  
25 were relaying those communications to the customers

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1           trying to keep them interested.

2                           I mean we didn't want them to lose  
3           their indication of interest while the tribe was  
4           trying to reach a decision, so I was communicating,  
5           but I was communicating just because it's -- it's  
6           just bad form for me to go around my salespeople to  
7           their customer. My communications were going to be  
8           through the salesperson that was covering that  
9           account.

10    Q       Were the communications by phone, in person,  
11           e-mail, a combination?

12    A       Most often --

13                   MR. TUREK: With whom and by whom, to the  
14           salespeople?

15                   MR. HANSEN: Yeah. Sorry, your  
16           communications to --

17                   THE WITNESS: Most often by phone.

18    BY MR. HANSEN:

19    Q       Were there any e-mails --

20                   MR. TUREK: I'm sorry. I still don't  
21           know who the conversations are with. The  
22           salespeople, the investors or the tribe?

23                   MR. HANSEN: Right. My question is from  
24           Mr. DeYoung to the salesperson, either Schinzer or  
25           Pat Dolan.

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1 THE WITNESS: It would have been mostly  
2 by -- by phone. I think there were a couple of  
3 occasions or maybe only one in which Pat left me a  
4 phone message, I called him back, we weren't able  
5 to connect. So before leaving at the end of the  
6 day, I may have sent him an e-mail because he was  
7 indicating what he was calling about, that kind of  
8 thing.

9 BY MR. HANSEN:

10 Q But you never reached out directly to Pat Dolan's  
11 client or to Saybrook?

12 A No.

13 Q When did the tribe next communicate to you -- well,  
14 let me ask you this.

15 What was Mr. Shibilski's role in all  
16 this? What was he doing while these communications  
17 were going on?

18 A If I was going to be calling Mr. Lindsley to follow  
19 up on the questions that we were getting from  
20 potential investors and their salespeople, I  
21 would -- if Kevin was available, I would have him  
22 on the call with me.

23 Now, did Kevin have other  
24 discussions as this was going along? He may have  
25 but not that I was aware of. But I do -- it would



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1 be common because he was the relationship manager  
2 that if there was a need for a call, I would often  
3 get Kevin on the line first, and we would then call  
4 Rick's office.

5 Q When did you eventually hear back from the tribe  
6 about their impressions of the two interested  
7 parties?

8 A My recollection, it was over a month. And so I  
9 want to say it went to the end of October, early  
10 November. I know the decision was made, and it was  
11 resolved in early November because I generated a  
12 written authorization to proceed and submitted it  
13 to -- for Vicky Doud's signature that memorialized  
14 their selection of Saybrook and our authorization  
15 to proceed with them to consummate the transaction.

16 Q Who at the tribe communicated to Stifel that the  
17 tribe had selected Saybrook?

18 A I don't remember.

19 Q Do you remember whether they told you, or did it go  
20 to Mr. Shibilski?

21 A I don't remember that either.

22 (Exhibit 19 was marked for  
23 identification.)

24 BY MR. HANSEN:

25 Q I'll hand you what's been marked as [Exhibit 19](#).

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1 The front page is Exhibit N because it was an  
2 exhibit to a filing in this case, but the second  
3 page looks like the front page of a PowerPoint.  
4 It's titled executive summary. Do you see that?

5 A Yes.

6 Q Are you familiar with this document?

7 A I am.

8 Q And I'm showing it to you now because it seems like  
9 it's around this time period where this document  
10 might be relevant.

11 Why don't you take just a minute and  
12 glance through it if you need to. Just tell me  
13 generally what this document is.

14 MR. TUREK: Read the whole thing, Dave.  
15 Not read it all, but look at it all.

16 BY MR. HANSEN:

17 Q Can you just tell me generally what this document  
18 is?

19 A This document was a summary of the -- in terms of  
20 the transaction as of this date in November of  
21 2007. The first eight pages are the ones that are  
22 pages 2 through 8 as they're paginated on there --  
23 I'm sorry, page 2 through 7. That was a little bit  
24 of reorganization but a memorialization of the  
25 terms of Saybrook Capital's financing proposal that

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1           they were finally willing to reduce to writing.

2                       Following -- the pages following  
3           that were a reproduction of the -- some of the  
4           material that we had pulled together and provided  
5           to our institutional salespeople very early on to  
6           solicit among institutional investors indications  
7           of interest. So this document has been with the  
8           tribe -- is a combination of those two.

9                       Essentially we're reminding the  
10          tribe that we provided Saybrook and other entities  
11          like them with this information about the tribal  
12          operations, and they've responded with this outline  
13          of a potential transaction.

14   Q       So pages 8 through 19 of [Exhibit 19](#) --

15   A       Were a -- first our work product with information  
16          that the tribe provided for us as well.

17   Q       Right. And that was what you --

18   A       Not Stifel, but its work product.

19   Q       That Stifel used to generate or try to generate  
20          interest in the Natchez project?

21   A       Yes.

22   Q       And Stifel Nicolaus prepared this document, is that  
23          correct?

24   A       Yeah, we assembled that document.

25   Q       And I take it this would have been -- Stifel used

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1 this to present to the tribe, is that right?

2 A To the tribe and to Saybrook.

3 Q Saybrook would have already gotten it, right?

4 Saybrook would have seen pages 8 through 19?

5 A Yes.

6 Q Was this -- was this -- who is the audience -- who  
7 is the intended audience of this document?

8 A Both Saybrook and the tribe.

9 Q As sort of a summary of everything that had been  
10 discussed and the general structure of the deal  
11 going forward?

12 A Yes.

13 Q At page 18 of the document, there's a heading  
14 called Management Team. Do you see that there in  
15 the middle of the page?

16 A Okay. That was the management team regarding --  
17 yes. I see that.

18 Q It's the management team of what?

19 A Of the Emerald Star Casino project in Natchez.

20 Q And Emerald Star, that was just the -- was that the  
21 name of this project before it was the Grand  
22 Soleil-Natchez?

23 A Yes. It appears, yes.

24 Q And I think you indicated -- it says -- under the  
25 management team it says, The management team will

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1 consist of Emerald Star Casino-Natchez, LLC, a  
2 Mississippi single project limited liability  
3 company whose members are Mr. Charles Cato,  
4 Mr. William Bayba and a political subdivision of  
5 the Lac du Flambeau Band of Lake Superior Chippewa  
6 Indians of Wisconsin, correct?

7 A Yes.

8 Q Mr. Cato is the person you indicated before who had  
9 the contact at Stifel in Florida, and that person  
10 in Florida went to Noack, and Noack went to the  
11 tribe, correct?

12 A That's my understanding.

13 Q Who is Bill -- Mr. William Bayba?

14 A Mr. Bayba is a hospitality developer in Wisconsin  
15 predominantly. I'm not familiar where Bill has  
16 done all his projects, but there's a couple of his  
17 projects in Wisconsin.

18 Q What's Big River Enterprises, LLC?

19 A I don't know specifically. The reference to Big  
20 River had always been that it was an entity that  
21 Bill Bayba controlled that was going to be working  
22 on the hotel portion -- the hospitality portion of  
23 the Natchez project.

24 Q Right below that it says Management Team, and it  
25 has that paragraph I just read, and then it's got

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1 three entities listed. It says Emerald Star Casino  
2 & Resorts, Inc., 19.9 percent, correct?

3 A Um-hum.

4 Q Big River Enterprises, LLC, and then in parentheses  
5 Mr. William Bayba, close parentheses,  
6 40.05 percent, correct?

7 A Um-hum.

8 MR. TUREK: Yes? You got to answer  
9 verbally.

10 THE WITNESS: Yes.

11 BY MR. HANSEN:

12 Q Lake of the Torches Federal Development  
13 Corporation, 40.05 percent, correct?

14 A Correct.

15 Q Do you know why Mr. Bayba is identified  
16 parenthetically after Big River Enterprises, LLC?

17 A I do not know for sure.

18 Q What do you think?

19 A I suspect it was a way in which we were able to  
20 identify that this was the firm from which  
21 Mr. Bayba was acting as the principal. I mean it  
22 could have been that neither the tribe nor Saybrook  
23 was familiar with the name Big River Enterprises  
24 though they were familiar that Mr. Bayba was going  
25 to be involved in the hospitality and development.

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1 Q Was any of that management team of significance to  
2 Stifel when it was generating interest from  
3 Mr. Dolan's client and Saybrook?

4 A It was of interest because we needed to be accurate  
5 in the description of the management.

6 Q Why is the description of the management so  
7 important? Who is that important to?

8 MR. TUREK: I'm going to object and  
9 instruct him not to answer. I'm having a hard time  
10 seeing where any of this goes into the five topics  
11 that's in the notice.

12 So I've got jurisdictional contacts,  
13 factual basis for documents, corporate relationship  
14 with Stifel. So I mean, I invite you to kind of  
15 give me a reason before we start going too far down  
16 this line.

17 BY MR. HANSEN:

18 Q Do you know when [Exhibit 19](#) would have been  
19 presented, if at all, to the tribe and by whom?

20 A It was -- it's the type of document that we would  
21 have circulated to make sure that we had in fact a  
22 meeting of the minds on this transaction. It was a  
23 recapitulation of some material information that  
24 had come in from various sources.

25 Q Do you know whether -- is this the kind of thing

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1           you would have -- someone from Stifel would have  
2           e-mailed to the tribe or was -- is this a  
3           PowerPoint presentation that would have been  
4           presented in person?

5       A     I've never made this as a PowerPoint presentation.  
6           So it would have been either e-mail or U.S. mail.

7       Q     Do you recall any reactions from the tribe to this  
8           document, [Exhibit 19](#)?

9       A     No.

10      Q     How about from Saybrook, did they react to  
11           [Exhibit 19](#)?

12      A     I do not recall.

13      Q     After that September 2007 meeting up at the tribe,  
14           what was the next time that someone from Stifel  
15           visited the tribe?

16      A     That would have been done as part of the due  
17           diligence visit to the tribe.

18      Q     When would that have occurred?

19      A     That was in November of 2007.

20      Q     And who would have done that?

21      A     I was on that trip as was Mr. Patrie, Mr. Schinzer  
22           and Scott Bayliss from Saybrook. Kevin Shibilski  
23           met us.

24      Q     Because he lived up there?

25      A     He met us. He picked us up at the airport. He was



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1 driving us around that day.

2 Q What did you do that day? Do you remember what day  
3 it was exactly?

4 A I did at one time. It's in the records, but I  
5 don't recall.

6 Q But it was some day in November of '07?

7 A Right.

8 Q What was the purpose of that visit? When you say  
9 due diligence, what does that mean?

10 A Saybrook requested the opportunity to meet with  
11 tribal officials to provide some follow-up  
12 questions on the financial information on both  
13 tribal and casino and hotel operations that they  
14 had previously been provided in writing. Also just  
15 to look at the facility, walk the land, if you  
16 will.

17 Q Kick the tires?

18 A Kick the tires and speak directly to officials of  
19 the tribe.

20 Q Do you remember who you spoke with from the tribe  
21 on that trip?

22 A We met with Rick Lindsley. We met with management  
23 at the casino. I don't recall the names. We also  
24 met with management at the hotel as well. And that  
25 was pretty much the order in which their due

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1 diligence occurred. It started out at the tribal  
2 offices and -- and it kind of worked its way around  
3 there. I remember we had the lunch at the casino.

4 Q Was it mostly Mr. Bayliss asking questions and  
5 doing due diligence? Who was sort of in charge?

6 A Mr. Bayliss was leading -- it was there for him to  
7 get the information he felt he needed in order to  
8 move the transaction forward. I was also asking  
9 questions but for the purposes of making sure that  
10 I understood what Scott was asking or what  
11 Mr. Bayliss was asking.

12 Q What was -- what did you view your role as at that  
13 time?

14 A Again, we were still at that point serving, as we  
15 have always, serving as placement agent which means  
16 we were bringing together the buyer and the seller  
17 of these securities.

18 I wanted to make sure however that I  
19 at all times had an accurate understanding of how  
20 the terms of this transaction were developing and  
21 also had an accurate understanding of what was  
22 material to Saybrook and Mr. Bayliss. And --  
23 because those all would have had input into the  
24 preparation of the offering memorandum.

25 Q Was there a representative of Big River Enterprises

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1           there during the due diligence process?

2     A     Not that I recall. Not at that meeting, no.

3     Q     Did Stifel do any of its own due diligence  
4           independent of Mr. Bayliss?

5     A     Preliminarily we had gathered available financial  
6           information to prepare our proposal of May 29th,  
7           but that was the extent of it. When we were  
8           invited to submit a proposal, there was some  
9           follow-up communication to Mr. Lindsley saying can  
10          you send us this if it's readily available.

11    Q     Stifel's due diligence though was focused primarily  
12          on the casino, correct?

13    A     Yes.

14    Q     Not really on the Grand Soleil-Natchez project  
15          itself?

16    A     Right.

17    Q     Do you remember -- I think you mentioned at that  
18          May 2007 meeting that the tribe had requested that  
19          Stifel had identified the maximum amount of  
20          borrowing that the tribe could do and that they had  
21          asked for less than that.

22                       Do you remember what was the maximum  
23          amount that Stifel thought that the casino could  
24          support?

25    A     I don't recall. I do know that it was in excess of

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1           \$50 million.

2       Q     Like 55 million or more like 100 million?

3       A     No, I don't recall reaching that level, but once we  
4           had gathered the financial information, we made  
5           certain credit assumptions that was then applied to  
6           that information and produced for them as part of  
7           the May 29th meeting what our analysis was of what  
8           the current operations could support.

9       Q     What led you to conclude that it was a competitive  
10           bidding process in May?

11      A     We were told.

12      Q     By who?

13      A     Rick.

14      Q     Rick Lindsley?

15      A     Yeah.

16      Q     He just said it's down to you and Baird or it's  
17           competitive --

18      A     Basically said we're interviewing you and Baird  
19           that they gave -- I remember asking, well, do I  
20           have my choice of which interview slot I get? He  
21           said, no, Dave Noack already took the first slot.  
22           So we knew we were coming in second. Dave was  
23           leaving as we were coming in that night.

24      Q     Did you see David up there?

25      A     Oh, yeah, we met in the lobby.

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1 Q How was that exchange?

2 A It was -- it was fine. The public finance  
3 fraternity is a small fraternity, and we compete  
4 all the time.

5 Q Did Stifel have any input in the September meeting  
6 which way the tribe should go, the Saybrook route  
7 or Pat Dolan's route?

8 A No.

9 Q Is that something that Stifel would have tried to  
10 avoid in fact?

11 A Yes.

12 Q After the November 2007 meeting with Saybrook up at  
13 the tribe, what was the next time that you recall  
14 Stifel representatives visiting the tribe?

15 A That would have been the January 2, 2008 meeting  
16 that was called to -- the tribal council to adopt  
17 the enabling legislation for the transaction.

18 Q Did you attend that meeting?

19 A I did not.

20 Q Who did?

21 A Kevin Shibilski attended representing Stifel.  
22 Brian Pierson, the tribe's legal counsel, was  
23 carrying those documents up from Milwaukee because,  
24 again, I believe Kevin came over from Phillips to  
25 attend the meeting.

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1 Q What was your understanding of the purpose of that  
2 meeting?

3 A To adopt the final resolutions that would be --  
4 that would then set us on a path to closing. There  
5 were -- my recollection was that there were  
6 resolutions -- corporate resolutions that were  
7 necessary to consolidate some pledged assets and  
8 revenues in one place, in one new corporate entity,  
9 and then there was also a borrowing resolution that  
10 approved several documents by reference.

11 Q How come you didn't go?

12 A I was sicker than a dog.

13 Q You remember it well?

14 A I was coming off of December sinus surgery that did  
15 not heal. I made the mistake of trying to get --  
16 decided that between Christmas and New Year's was a  
17 good time to get it done. It was not a good time  
18 to get it done.

19 Q Doesn't sound like it was ever a good time for  
20 something like that.

21 A Yeah.

22 Q How did that meeting go?

23 A They approved the transaction.

24 Q Did Mr. Shibilski report back to you during your  
25 recovery period about the meeting?

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1 A He mentioned that there was considerable  
2 discussion, but yeah, that the transaction received  
3 majority support.

4 Q Were you surprised at all to learn that there was  
5 discussion given that in November that term sheet  
6 seemed like it was a done deal?

7 A I was not surprised.

8 Q Why were you not surprised?

9 A Because of the delay that we experienced between  
10 the September meeting in which I laid out the two  
11 alternative proposals and then it was more than a  
12 month before they got back to me with their  
13 decision, and this was from a client that had up to  
14 that point been emphasizing how time was of the  
15 essence. And we saw a month disappear on the  
16 calendar while the ball was in their court if you  
17 will.

18 Q What did that delay suggest to you?

19 A That there was a lot of debate among the tribe as  
20 to how the project should move forward or if it  
21 should move forward.

22 Q Did Stifel have any particular interest in whether  
23 the bond transaction was consummated or not?

24 A We're in the investment business. We only get paid  
25 if a deal closes.

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1 Q What was the -- you said you had negotiated the  
2 fee. What was the fee? What was Stifel's fee at  
3 the bond deal close?

4 A We ended up agreeing on a fee of I believe  
5 three-quarters of one percent which on a  
6 \$50 million transaction would have been \$375,000.

7 Q Is that a typical fee for this type of transaction?

8 A It was in the range.

9 Q In on the low end or in on the high end?

10 A It was in on the low end.

11 Q What led to that fee being on the low end of the  
12 range?

13 A As we discussed after our presentation on May 29th,  
14 tribal officials tracked down Kevin Shibilski and  
15 wanted to negotiate the fee down from the level we  
16 had originally proposed.

17 Q What was Stifel's role at the January 2, 2008  
18 meeting?

19 A Placement agent, and we were the -- in that role we  
20 were the initial purchaser under the bond purchase  
21 agreement.

22 Q And what was the purpose of Stifel appearing at the  
23 meeting?

24 A To answer questions that may come up. It would be  
25 customary that we make ourselves available as a



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1 resource if there are questions. Bond transactions  
2 can be complicated. Though we weren't going to  
3 provide opinions on -- that call for a legal  
4 conclusion of the documents. But in terms of  
5 financial provisions, Saybrook was not there, and  
6 we would make ourselves available to answer those  
7 questions.

8 Q Stifel would be the party though that would have  
9 been responsible for financial projections and the  
10 financial structure of the deal, correct?

11 A No.

12 Q Who would have been responsible for that?

13 A The structure of the transaction was negotiated  
14 between Saybrook and the issuer. We put out a  
15 solicitation of interest in very general terms, and  
16 things like structure are matters of specificity  
17 that are normally brought to the table initially by  
18 that investor describing the terms under which he  
19 has interest.

20 Q So if questions arose about the bond transaction,  
21 what would Stifel -- what type of questions would  
22 you have expected Stifel to be prepared to answer?  
23 If not about the financial structure of the deal,  
24 then about what?

25 A We would be prepared to answer questions at that

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1 January 2nd meeting about the financial structure  
2 of the deal. At that point the budget is set  
3 there, the repayment schedule is set in that  
4 resolution, but how those are portrayed in that  
5 resolution on January 2nd was a result of  
6 negotiations between Saybrook and their counsel and  
7 the tribe and their counsel.

8 Q What was Stifel's role at that meeting with respect  
9 to giving advice about the Grand Soleil-Natchez  
10 project?

11 A Grand Soleil-Natchez was one of the purposes for  
12 which bond proceeds were proposed to have been  
13 expended. Other than -- other than that by this  
14 point decisions on the merits of that decision  
15 would have already been made by the tribe or they  
16 wouldn't have been present in the resolution.

17 Q And Stifel hadn't done due diligence on the Grand  
18 Soleil project specifically, correct?

19 A No, they had not.

20 Q So Stifel wouldn't have been in a position to  
21 advise the tribe on the risks or benefits or wisdom  
22 of investing in the Grand Soleil project, correct?

23 A Correct.

24 Q What would be the reason for Stifel not -- would it  
25 have been responsible for Stifel to do that?

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1 A It depends on the question as asked. Rick Lindsley  
2 was representing the tribe's interest -- financial  
3 interest in Natchez at this point. And there  
4 were -- from time to time we'd get inquiries  
5 regarding the status of the Natchez project. Those  
6 references were always made to Rick.

7 Q Who would get inquiries about the status of the  
8 Natchez project? I didn't hear you.

9 A They would come from -- Saybrook would ask Schinzer  
10 and we'd -- I'd relay that information to -- to  
11 Mr. Lindsley.

12 Q You would relay questions from Saybrook about Grand  
13 Soleil-Natchez to Mr. Lindsley?

14 A Yeah.

15 MR. CLARK: Excuse me, could you read  
16 back that last question and answer?

17 (Record read.)

18 BY MR. HANSEN:

19 Q You were aware of the January 2, 2008 meeting,  
20 correct?

21 A Correct.

22 Q And you knew Mr. Shibilski was going to go?

23 A Yes.

24 Q And you would have gone yourself if you hadn't been  
25 sick, right?

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1 A Yes.

2 Q Would you have gone ordinarily with Mr. Shibilski?  
3 It would have been both of you typically?

4 A What was typical, I would have asked him to meet me  
5 there, yeah.

6 Q Of the fee, the \$375,000 fee that Stifel made on  
7 the bond transaction, do you know how much of that  
8 went to Mr. Shibilski?

9 A No.

10 Q A portion of it did?

11 A Not necessarily.

12 Q You said after the January 2nd meeting there was a  
13 majority approval to do the transaction, correct?

14 A Um-hum.

15 MR. TUREK: Yes?

16 THE WITNESS: Yes.

17 BY MR. HANSEN:

18 Q And the -- certain documents were executed that  
19 day, correct?

20 A Normally. I was not there.

21 Q Oh --

22 A But normally that would have been the case.

23 Q Do you know if -- I know you might not have  
24 personal knowledge, but does Stifel know that  
25 documents were executed that day?

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1 A I believe there were documents executed that day.

2 Q Do you know which ones?

3 A Often they would have been submitted by -- but with  
4 just signature pages -- clearly the resolutions  
5 because they were there I would -- I'm presuming  
6 would have been executed that day.

7 Q At the tribal center?

8 A Yeah.

9 Q Yes?

10 A Yes.

11 Q Did you feel that you were familiar with the  
12 structure of the bond transaction?

13 A Yes.

14 Q Is there any detail of it that Stifel felt that it  
15 didn't understand or didn't know about?

16 A The limited offering memorandum did produce an  
17 accurate description of the material terms of the  
18 transaction. Whether there were anything involved  
19 in the transaction that we were not privy to, I  
20 can't answer that question.

21 Q But the big picture stuff, Stifel knew?

22 A Yes.

23 Q For example, the security interest that Saybrook  
24 would have had in various assets of the tribe or  
25 the EDC, the Economic Development Corporation,

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1 correct?

2 A Yes.

3 Q Those would have all been spelled out?

4 A Yes.

5 Q Stifel understood those?

6 A Yes.

7 Q Remedies in the event of defaults, Stifel would  
8 have understood all of those?

9 A Yes.

10 Q When Mr. Lehky did his analysis of the level of  
11 debt that the casino could support, did he generate  
12 written reports of that analysis?

13 A Yes.

14 Q Just one, or were there multiple analyses done or  
15 versions, et cetera, that type of thing?

16 A It would have been typical there would have been  
17 multiple versions circulated internally at Stifel  
18 Nicolaus.

19 Q Did those analyses consider the casino revenue at  
20 various points of the year?

21 A No.

22 Q What was the nature of the analysis? What was he  
23 looking at?

24 A He was looking at net revenues available for debt  
25 service and -- as -- we at least in the preparation

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1 for the May 29th meeting defined them internally.  
2 That term became very important as we moved to  
3 negotiate -- as final terms were developed by -- in  
4 a single investor, but we had to make some  
5 assumptions.

6 So those were some of the  
7 assumptions that we made going into -- so -- so  
8 yes, there was -- he had financial information from  
9 the tribe on an annual basis, and we made certain  
10 assumptions as to what would -- what we would be  
11 willing to assume in net revenues available for  
12 debt service.

13 Q Was there consideration given to seasonal  
14 fluctuations in revenue?

15 A Not at that time.

16 Q Was Stifel aware that there were seasonal  
17 fluctuations in casino revenue?

18 A Absolutely.

19 Q Do you know why Mr. Lehky wouldn't have considered  
20 those in his calculations?

21 A Because it would have had an effect in determining  
22 things like when was principal paid, and that was  
23 outside the scope of that analysis, so we were  
24 working on annual figures.

25 (Discussion off the record.)

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1                   ([Exhibit 20](#) was marked for  
2                   identification.)

3       BY MR. HANSEN:

4       Q       Before we move on, first real quick on [Exhibit 19](#).  
5               Who actually prepared that document? Who drafted  
6               it? That's the executive summary.

7       A       It would have been prepared by Stifel Nicolaus. It  
8               would have been a collaborative effort of the  
9               public finance department which would include  
10              administrative staff as well as myself, Brian  
11              Lehky, Paul Patrie and Kevin Shibilski.

12      Q       I'll hand you what's been marked as [Exhibit 20](#).  
13              Again, there's a cover page that says Exhibit B.  
14              It was an exhibit to a filing. If you turn to the  
15              second page, you'll see it's the limited offering  
16              memorandum --

17      A       Yes.

18      Q       -- that's been mentioned before. It is the -- it's  
19              24 pages, and I'll represent to you that the  
20              document -- the complete document has exhibits and  
21              attachments. But for purposes of today, I just  
22              wanted to ask you a few questions about this  
23              document. All right?

24      A       Okay.

25      Q       You're familiar with it?



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1 A I am.

2 Q This is -- tell me what this is. What's the  
3 purpose of the limited offering memorandum?

4 A The purpose of this document is to present all  
5 material facts necessary to make an informed  
6 investment decision on the bonds that are  
7 described. It speaks as of its date, January 18,  
8 2008 and only as of its date, January 18, 2008.

9 Q Who's the intended audience?

10 A The intended audience is both Saybrook and  
11 subsequent purchasers of the bonds, if any.

12 Q Who drafted it?

13 A Stifel Nicolaus provided to our placement agent's  
14 counsel a template for this document that was based  
15 upon other similar transactions that we had done.  
16 And then it was -- that template was then amended  
17 to conform to the terms of this transaction, the  
18 financial condition of this borrower or issuer, but  
19 we start with the template because we don't want to  
20 duplicate a lot of effort. And secondly, it acts  
21 as a guide so we hopefully don't miss anything  
22 that's material.

23 Q Is a limited offering memorandum such as this  
24 common in the industry, or is this more of a Stifel  
25 specific-type document?

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1 A It's common in the industry.

2 Q Who provided the information that went into the  
3 limited offering memorandum?

4 A Several parties. It would be the tribe. It would  
5 be other sources that we found that we deemed  
6 reliable in terms of the auditors for the tribe,  
7 the financial information that went in there.

8 Also it was -- terms of the  
9 transaction were provided by Saybrook, and also  
10 there are entities like Depository Trust Company  
11 that contributed information, I described them.  
12 The opinion of bond counsel was described with  
13 information we derived from bond counsel, the  
14 opinion of the issuer's council was described with  
15 the information we derived from them.

16 Stifel Nicolaus and its counsel  
17 acted as a clearinghouse for all that information  
18 being contributed to produce this document.

19 Q Stifel sort of assembled the information from a  
20 variety of sources, fair to say?

21 A Yes, that's fair to say.

22 Q And the placement agent counsel, who was that?

23 A That was Balch & Bingham in Jackson, Mississippi.

24 Q Do you know what lawyer specifically assisted with  
25 this?

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1 A Chris Waddell. I believe it's Christian Waddell  
2 down at Balch & Bingham.

3 Q Why use a Mississippi law firm?

4 A One of the terms of this transaction limited the  
5 release of bond proceeds for the Natchez project  
6 until certain defined progress points had been met  
7 in the gaming license application process.

8 Balch & Bingham was well suited in  
9 assisting us in monitoring the license application  
10 with the Mississippi Gaming Commission, and it was  
11 helpful that they were also a qualified firm in the  
12 securities industry.

13 So they were situated in a way that  
14 a firm perhaps in Wisconsin would not have been so  
15 well situated.

16 Q Who was responsible for hiring Balch & Bingham?  
17 Who found them?

18 A That would have been my call. That was my  
19 decision.

20 Q You knew that firm before dealing with the bond  
21 transaction here?

22 A Yes. I had met Chris Waddell at a professional  
23 function.

24 Q Was Balch & Bingham's role limited to advising  
25 Stifel?

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1 A We were Balch & Bingham's only client in this  
2 transaction.

3 Q The limited offering memorandum is not a contract  
4 between parties, is it?

5 MR. TUREK: Object to the extent it calls  
6 for a legal conclusion. You can answer.

7 THE WITNESS: It's not a contract to the  
8 extent that it's not countersigned by another  
9 party, but other parties do acquire certain rights  
10 in this document.

11 BY MR. HANSEN:

12 Q What parties acquire rights under this document?

13 A Holders of the bonds. There is an affirmative  
14 obligation to refrain from fraud, for example, by  
15 the issuer of the securities in this document.  
16 That was just one example.

17 Q Anyone aside from holders?

18 A Well, and again, it's a document that even  
19 potential future holders would -- or purchasers or  
20 investors would rely upon. If nothing else, it  
21 would put them on notice that they should be  
22 seeking additional information if they seek a date,  
23 financials that's dated, but it's a document that  
24 enters the stream of commerce in our industry.

25 Q It's designed for informational purposes to

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1 prospective holders?

2 A Yes.

3 Q Did it create any rights in Stifel?

4 A Yes.

5 Q What rights does Stifel have under the limited  
6 offering memorandum?

7 A We were identified as the initial purchaser of the  
8 bonds.

9 Q And as an initial purchaser of the bonds, what  
10 rights does Stifel take under this limited offering  
11 memorandum?

12 A Well, we have --

13 MR. TUREK: Objection, legal conclusion.  
14 Go ahead and answer, Dave.

15 THE WITNESS: Rights specifically, that's  
16 a very broad question. But there was -- as the  
17 initial purchaser of bonds, as that title  
18 indicates, initially at closing we were the only  
19 owner of the bonds.

20 BY MR. HANSEN:

21 Q They were immediately transferred to a Saybrook  
22 entity, correct?

23 A Immediately meaning?

24 Q Within -- I don't know. You tell me. When did it  
25 happen?

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1 A I believe our -- it happened the same day. The  
2 transfer to Saybrook happened the same day.

3 Q Physically -- not physically but it goes -- just  
4 electronic moving within accounts, correct?

5 A Yes.

6 Q Can you describe the exact flow of how this worked  
7 when the -- what was the first step when these  
8 bonds are issued? What does that actually mean?

9 A Bonds are issued when they are delivered and paid  
10 for.

11 Q How was that effected here?

12 A It's effected by essentially prior to closing,  
13 normally about two days, the bond certificate and  
14 then a book-entry-only issue such as this is sent  
15 to the Depository Trust Company in New York that  
16 receives the certificate for the bonds. They make  
17 certain entries on their book entry system  
18 identifying the bonds.

19 Normally the day before closing is  
20 a -- what we refer to as a pre-closing in which all  
21 of the closing documents are assembled, and we make  
22 sure all parties are in agreement that everything  
23 there is in order by the end of the day.

24 On the day of closing, then there  
25 are two things that happen to constitute issuance.

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1 One is that funds are transferred under the terms  
2 of the bond purchase agreement from the initial  
3 purchaser to the issuer of the bonds, and a phone  
4 conversation is had with Depository Trust Company  
5 to release those bonds from their trust status, if  
6 you will, and post them to a participant's account.  
7 Stifel Nicolaus company is a participant in  
8 Depository Trust Company.

9 Q And where does Saybrook's money come in?

10 A Saybrook then essentially makes money funds  
11 available at Stifel in their customer account with  
12 us in exchange for their funds. We then post a  
13 transfer of the bonds to their customer account.

14 Q At that point, the initial purchaser is out of the  
15 picture completely?

16 A Not out of the picture completely because the bonds  
17 are still registered in our participant account at  
18 DTC because Saybrook or their nominee has  
19 essentially purchased their interest through an  
20 account that they maintained with Stifel Nicolaus.

21 Q Is the initial purchaser ever out of the picture  
22 completely?

23 A Yes.

24 Q At what point?

25 A If the bonds are transferred to or -- to a customer

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1 of or directly to some other direct participant at  
2 DTC. I mean if XYZ Investment Corp acquired the  
3 bonds from Saybrook and they were a direct  
4 participant, we would notify DTC to remove the  
5 bonds from our participant account and post them to  
6 XYZ securities' participant account.

7 Q What's Wedbush Morgan Securities?

8 A It's a securities broker/dealer.

9 Q How do they fit into this transaction here?

10 A I've seen them in this transaction because Saybrook  
11 or LDF Acquisitions moved their account  
12 relationship from Stifel Nicolaus to Wedbush. And  
13 so we basically had to -- we didn't have to -- what  
14 we did is we then made arrangements with DTC that  
15 took Stifel out of the -- took the bonds out of  
16 Stifel's participant account and credited them to  
17 Wedbush's.

18 Q Okay. That's the kind of transaction we talked  
19 about before?

20 A Right.

21 Q Wedbush is the XYZ?

22 A Right. Okay, Wedbush is the XYZ, that's right.

23 Q So at that point though, now that that occurred in  
24 2009, Stifel is out in terms of its initial  
25 purchaser role is over, correct?



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1 A We no longer have an interest in the bonds in any  
2 respect at that point.

3 Q There's nothing in the limited offering memorandum  
4 anymore that affects Stifel or you're relying on?

5 A Au, contraire.

6 Q Explain.

7 A Representations made in this transaction -- like I  
8 said, this is a document that has -- that speaks  
9 only as of its date, but it has a life that  
10 continues. And like I said, subsequent purchasers  
11 and owners of these bonds, if they meet the  
12 requirements for ownership, are clearly going to be  
13 still identifying Stifel as the initial purchaser,  
14 and we still stand in the chain of title, if you  
15 will, of the securities.

16 Q How does that affect Stifel?

17 A It would affect Stifel if they felt -- if anyone --  
18 if any subsequent holder felt that there was a  
19 substantial misrepresentation in this document that  
20 we were a party to, if there was -- I mean, the  
21 securities laws don't allow you to walk away from  
22 fraud even if you no longer have a financial  
23 interest in the transaction.

24 Q Are you aware whether there are any such fraudulent  
25 statements contained in the limited offering

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1 memorandum?

2 A I am not aware that there are.

3 Q But if there were, that would -- you feel at that  
4 point Stifel would have a potential liability or  
5 some sort of legal interest in that situation?

6 A Yes.

7 Q Were there any other situations aside from fraud or  
8 misstatements in the limited offering memorandum  
9 that would affect Stifel's potential liability?

10 MR. TUREK: I'm going to object for a  
11 legal conclusion and overbroad, but you can answer.

12 THE WITNESS: You're asking me to -- if I  
13 can make up a scenario that could potentially cause  
14 liability to arise and that's -- use your  
15 imagination.

16 BY MR. HANSEN:

17 Q There's nothing that you're specifically aware of  
18 as you sit here today?

19 A No, nothing that I'm aware of today.

20 Q Given that, is there any -- is Stifel some sort of  
21 beneficiary of the limited offering memorandum?

22 MR. TUREK: Object, legal conclusion. Go  
23 ahead.

24 BY MR. HANSEN:

25 Q This wasn't done to help Stifel, correct?

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1 A Well, the representations to the tribe in here were  
2 initially made to us. And my recollection is our  
3 bond purchase agreement had the delivery of this  
4 document by the tribe to be one of the conditions  
5 of our accounts to make the purchase. So yes,  
6 Stifel was as benefited by this document as any  
7 owner/purchaser of the bonds would be.

8 Q In that it was entitled to rely on the  
9 representations contained in the limited offering  
10 memorandum?

11 A Yes.

12 Q And once Stifel's divested of any obligation or  
13 ownership of the bonds, unless there's some --  
14 unless you learn later that there's a flaw  
15 contained in this limited offer memorandum, it  
16 doesn't affect Stifel?

17 A Once the bonds are transferred to another DTC  
18 participant, all incidents of ownership have left  
19 Stifel and been vested elsewhere.

20 (Exhibit 21 was marked for  
21 identification.)

22 BY MR. HANSEN:

23 Q I'll hand you what's been marked as [Exhibit 21](#).  
24 Again, it's got the cover page we know now is an  
25 exhibit to the pleading. The second page I'll

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1 represent to you it says is the bond purchase  
2 agreement between Lake of the Torches Economic  
3 Development Corporation and Stifel Nicolaus &  
4 Company, Incorporated. Do you see that?

5 A I do.

6 Q You're familiar with this document, certainly?

7 A I am.

8 Q And this is a contract between the Lake of the  
9 Torches Economic Development Corporation and Stifel  
10 Nicolaus, correct?

11 A That's correct.

12 Q Aside from this document, [Exhibit 21](#), are there  
13 other contracts between Stifel and any  
14 Lac du Flambeau tribal entities such as the  
15 Economic Development Corporation, the Federal  
16 Development Corporation or the tribe itself?

17 MR. TUREK: Objection, legal conclusion.  
18 Go ahead.

19 THE WITNESS: There was a document with  
20 an authorization to proceed in which Victoria  
21 Doud's and my signature both appear.

22 BY MR. HANSEN:

23 Q I was going to ask you about that. What's the  
24 nature of that document? What's the point of it?

25 A It was one that was generated by me, and I felt it

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1 was just necessary for us to get a written  
2 understanding as to what investor we were going to  
3 be working with to move the transaction.

4 The document also designates the  
5 tribe's legal counsel, so I knew that I would have  
6 a right to communicate with Godfrey & Kahn, so that  
7 designation is in there.

8 My recollection is that Saybrook had  
9 not yet decided who their legal counsel was, so  
10 that is -- there's -- that isn't there, but we  
11 identified who the parties are, who was represented  
12 by counsel, and it just gave us an authorization to  
13 help identify this as the team that's going to try  
14 to move this forward, and that particularly in  
15 areas of attorney/client relationships, I wanted to  
16 know that when I picked up the phone as we were  
17 trying to move documents forward, that I knew who I  
18 was going to be talking to at Godfrey & Kahn.

19 Q Aside from that contract in [Exhibit 21](#), are there  
20 any other contracts that you're aware of between  
21 any Stifel entity and any tribal entity?

22 A I am not aware of anything else that we are both  
23 signatories to.

24 Q Anything that you're not signatories to that might  
25 full under this concept of creating obligations or

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1 giving rights to either side?

2 MR. TUREK: Objection, legal conclusion.  
3 Go ahead.

4 THE WITNESS: To the extent that we were  
5 at any time in this transaction a bondholder, we  
6 had all the rights of the bondholder. And  
7 bondholders are often not signatories to many  
8 documents but clearly are beneficiaries of -- talk  
9 about anything to -- in terms of pledges of assets,  
10 pledges of revenues, security agreements.

11 So we had an interest and a -- and a  
12 financial interest in a lot of what the other  
13 documents, if you will, portray even though we  
14 weren't signatories to those.

15 BY MR. HANSEN:

16 Q And those arise as your status -- as Stifel's  
17 status as a bondholder?

18 A Yes.

19 Q And presumably would last for as long as you are  
20 bondholders?

21 A Um-hum.

22 Q Yes?

23 A Yes.

24 Q But not after, correct?

25 MR. TUREK: Objection, legal conclusion.

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1 Go ahead.

2 THE WITNESS: Obligations could survive  
3 again to the extent that there were subsequently  
4 discovered events during the time of our ownership.  
5 It still gives rise to a claim.

6 For example, there are promises made  
7 under the bond purchase agreement that clearly  
8 survive our relationship with the tribe even when  
9 we are -- even when we've fulfilled our obligations  
10 as the initial purchaser of bonds.

11 BY MR. HANSEN:

12 Q In the limited offering memorandum, is it -- is an  
13 important part of that issues that related to the  
14 Grand Soleil-Natchez project? In other words, as  
15 you're disclosing -- as that document discloses  
16 certain things to the world at large, bondholders  
17 and subsequent potential holders, is it important  
18 to discuss issues related to the -- where the bond  
19 proceeds go, for example to the Grand  
20 Soleil-Natchez project?

21 A The fact that a part of the proceeds were in  
22 fact -- were specifically -- a defined part of the  
23 proceeds were being expended at Grand Soleil was  
24 one of the disclosures on the sources and uses in  
25 the final budget for the project.

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1 But because Grand Soleil provided  
2 none of the security for the transaction and Grand  
3 Soleil in fact didn't have any revenues at this  
4 point, other than that, it was not a material fact  
5 anyone who would make an informed investment  
6 decision in this transaction.

7 Q What about the fact that the Grand Soleil-Natchez  
8 project was the investment vehicle by which the  
9 issuers were to repay the bonds? Is that a  
10 material fact that the bondholders and future  
11 bondholders would want to know and understand about  
12 in a limited offering memorandum?

13 A Grand Soleil-Natchez did not pledge anything to the  
14 repayment of the bonds.

15 Q Was the investment in the Grand Soleil-Natchez not  
16 the basis on which the tribe and the EDC would be  
17 able to repay the bonds?

18 A No.

19 Q What is your understanding of the source of the  
20 repayment of the bonds by the tribe?

21 A The revenues of the hotel and casino in  
22 Lac du Flambeau, Wisconsin.

23 Q So Stifel's understanding is that the tribe's --  
24 the Lake of the Torches casino revenue would  
25 actually be used to fund the repayment of the



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1 bonds?

2 A Yes.

3 Q And that whether the Grand Soleil-Natchez project  
4 was successful or had positive cash flow, what have  
5 you, was not really relevant?

6 A That project was not pledged as security for these  
7 bonds.

8 Q So there would be no reason to disclose in the  
9 limited offering memorandum any interest that the  
10 placement agent would have in the Grand  
11 Soleil-Natchez project?

12 MR. TUREK: Objection, legal conclusion,  
13 outside the scope of the listed topics. I'll  
14 instruct the witness not to answer.

15 ([Exhibit 22](#) was marked for  
16 identification.)

17 BY MR. HANSEN:

18 Q I'll hand you what's been marked as [Exhibit 22](#).  
19 It's double-sided because it's long, but the second  
20 page identifies this document as a Lac du Flambeau  
21 Band of Lake Superior Chippewa Indians meeting  
22 minutes of January 22, 2008. Do you see that  
23 there?

24 A I do.

25 Q In your preparation for today, did you review this

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1 document?

2 A I've seen this document, yes.

3 Q So this contains some specific on-reservation  
4 conduct by Stifel, and I want to just talk to you a  
5 little bit about it.

6 A Okay.

7 Q At page 13 -- the page is indicated in the upper  
8 right-hand corner.

9 A Um-hum.

10 Q Do you see -- at line six this is Kevin Shibilski  
11 speaking. Do you see that?

12 A I do.

13 Q And you're aware that this is the meeting that you  
14 were talking about before where Stifel went up and  
15 presented to the tribal council, correct?

16 A Yeah. This is the January 2, 2008 meeting.

17 Q And this is Kevin Shibilski speaking?

18 A Kevin represented us at that meeting.

19 Q And Vicky Doud says at lines four and five,

20 "I think it would be worth it to go  
21 through the operations."

22 Do you see that?

23 A Yes.

24 Q And then Kevin Shibilski began speaking?

25 A Um-hum.

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1 MR. TUREK: Was that a yes?

2 THE WITNESS: Yes.

3 BY MR. HANSEN:

4 Q And he speaks throughout page 13, and up at the top  
5 of page 14 -- well, at the bottom he says -- lines  
6 23 and 24, page 13. He says,

7 "There was also extra fee of \$1  
8 million tacked on it that you paid for assisting  
9 and securing the debt so a positive arbitrage,  
10 which is greater interest than you're paying going  
11 back to the tribe as well as \$1 million."

12 Do you know what he's talking about  
13 there?

14 A I think so.

15 Q What do you think he's talking about?

16 A The proceeds from the bonds that were being  
17 provided in Natchez were going down to Natchez as a  
18 loan from the EDC. It was the intention that that  
19 loan would carry a higher interest rate and perhaps  
20 even some origination, if you will, fees that were  
21 going to be charged to Natchez by the tribe.

22 Again, it wasn't part of the bond  
23 transaction. It was never pledged to bonded  
24 transactions. The EDC's obligation to make  
25 payments under the bonds was never conditioned upon

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1 Natchez making prompt and timely payments to them,  
2 but part of the transaction and part of the -- part  
3 of the way the financials were built was that in  
4 exchange for making this loan, the tribe was going  
5 to be entitled to charge a higher interest rate  
6 than what they were paying on their funds.

7 I believe that that is what Kevin's  
8 referring to when he refers to positive arbitrage.  
9 Arbitrage is the ability in the bond industry of  
10 borrowing money at one rate and reinvesting it or  
11 lending it out at a higher rate.

12 Q If Stifel wasn't advising the tribe on the Grand  
13 Soleil-Natchez project and whether it was a good or  
14 bad investment or otherwise, why would  
15 Mr. Shibilski be telling this to the tribe?

16 A It's because it was -- because he was -- that's the  
17 way he interpreted the information he was being  
18 asked for. It wasn't a secret. We knew that the  
19 EDC was going to be lending money to Natchez.

20 We just didn't want -- we just  
21 didn't see that added any value to the collateral  
22 of security for the bond deal.

23 Q In fact, it's not even relevant to the bond deal I  
24 think is what you're saying?

25 A It's relevant in that it constitutes an expenditure

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1 of the proceeds. The limited offering memorandum  
2 in the -- in the financing budget among the uses of  
3 funds is a loan to Natchez of 15-plus million  
4 dollars.

5 Q Was this something that was discussed by Stifel in  
6 any of these meetings in May or September or in the  
7 November presentation?

8 A No.

9 Q How does --

10 A At that point we didn't discuss whether or not it  
11 was going to be a loan or an equity investment.  
12 And ultimately we were informed of what had been  
13 decided, but we weren't a party to the discussions  
14 that led up to that decision.

15 Q Who made the decision?

16 A I assume the tribe and whoever was making those  
17 decisions down in Natchez for Grand Soleil.

18 Q Who was doing that?

19 A I don't know. Grand Soleil wasn't my client.

20 Q How does Mr. Shibilski know?

21 A I don't know how --

22 MR. TUREK: Hold on. Again, I think  
23 we're far afield from what is relevant under the  
24 five topics. I get that there's -- here's topic  
25 one: Knowledge of Stifel Nicolaus & Company,

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1 Inc.'s jurisdictional contacts with the tribal  
2 parties including but not limited to Stifel's  
3 on-reservation conduct, its direction and control  
4 or attempted direction and control on-reservation  
5 travel resources and contacts with the tribal  
6 parties on the reservation.

7 Jurisdictional contacts I  
8 interpreted to be the Montana factors, and that  
9 would be the two exceptions under Montana. The  
10 nature of these particular questions I don't think  
11 goes under either of those factors.

12 So if you read this question back,  
13 let me -- I think there's still a problem with this  
14 but that's -- I think we're getting to a point  
15 where we're getting far afield.

16 To add on to that, my position is in  
17 the tribal court litigation there is no claim  
18 against Stifel, and so the misrep claims or  
19 anything that relates to this transaction I don't  
20 think is -- constitutes the nature of a  
21 jurisdictional contact for the federal litigation  
22 under Montana.

23 Sorry. If you could go back and  
24 read the last question.

25 (Record read.)

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1 THE WITNESS: I don't know.

2 BY MR. HANSEN:

3 Q You're aware that Kevin Shibilski had a personal  
4 financial interest in Big River Enterprises,  
5 correct?

6 A I was not aware of that.

7 Q When did you become aware of that?

8 MR. TUREK: Objection, outside the scope.  
9 You're not going to answer.

10 THE WITNESS: Okay.

11 BY MR. HANSEN:

12 Q Well, I think the issue is that under the second  
13 Montana factor, it goes to the welfare of the  
14 tribe, where it could harm the welfare of the  
15 tribe, and I think Kevin Shibilski's conduct on the  
16 reservation as a representative of Stifel if he had  
17 an undisclosed interest in the transaction while he  
18 was working for Stifel and had personal knowledge  
19 about the financial effects of the bond deal, it  
20 goes right to it. And there's the statements that  
21 he made at the reservation.

22 MR. TUREK: For starters that's never  
23 been articulated in any briefing about Shibilski's  
24 conduct having a relationship under Montana. Even  
25 assuming you could go beyond those things including

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1 the fact that there's no proposed findings of fact  
2 that have anything to do with this, this is just an  
3 attempt to get your fraud case in through a  
4 30(b)(6) deposition that had nothing to do with  
5 fraud.

6 And so he'll talk about contacts.  
7 He's given you an idea of what the contacts and  
8 nature of those contacts are about. The exhibits  
9 speak for themselves. Whether they're true or not  
10 true speaks for themselves, and the nature of  
11 Mr. Shibilski's relationship has nothing to do with  
12 Montana. So I am going to instruct him to continue  
13 to not answer that question.

14 MR. HANSEN: Just for the record, in the  
15 Stifel proposed findings of fact, No. 28 states the  
16 tribe and the EDC allege that Stifel had a conflict  
17 of interest in the transaction, made  
18 misrepresentations about the true financial  
19 ramifications of the bond transaction and failed to  
20 advise the tribe of other less risky alternatives  
21 to the bond transaction. And then it cites to the  
22 complaint.

23 So in terms of proposed findings of  
24 fact dealing with the nature of the transaction and  
25 the counterclaims and the tribal court statement of



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1 claim, it is in the proposed findings of fact.

2 There's no question of that.

3 MR. TUREK: We can debate that. I  
4 disagree wholeheartedly that a characterization of  
5 the tribal court action gives you a proposed  
6 finding of fact to pursue a fraud defense to the  
7 federal litigation, but we can take that up with  
8 the judge and talk about that.

9 MR. HANSEN: I'm just trying to make sure  
10 that I understand what Stifel's role and  
11 understanding was in the bond transaction through  
12 Mr. Shibilski. All right.

13 BY MR. HANSEN:

14 Q He had a financial interest in Big River  
15 Enterprises. Big River Enterprises was a  
16 participant in the Grand Soleil-Natchez project,  
17 right?

18 MR. TUREK: Objection, outside the scope.

19 MR. HANSEN: Go ahead.

20 MR. TUREK: Outside the scope. Don't  
21 answer it.

22 THE WITNESS: Okay.

23 BY MR. HANSEN:

24 Q When was the next time anyone from Stifel traveled  
25 to the tribe after the January 2, 2008 meeting?

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1 A The next time I'm aware is fall of 2008.

2 Q And what was the nature of that?

3 MR. CLARK: 2008?

4 THE WITNESS: Fall of 2008.

5 BY MR. HANSEN:

6 Q Who went?

7 A Kevin Shibilski and I were there. I did not get  
8 the call from the tribe. Kevin indicated that the  
9 tribe officials wanted to -- had some questions  
10 about the transaction, and particularly they wanted  
11 someone to talk about that the upcoming tribal  
12 council election was heating up, and this  
13 transaction had become an issue in that election.

14 Q Who did you meet with?

15 A Well, we met with Vicky Doud, met with Carl  
16 Edwards. Rick Lindsley was there. I want to -- I  
17 think -- and Kevin and I. I think that was the  
18 group if my memory is right. It was not a called  
19 meeting of the tribal council.

20 Q And you discussed that the matters related to this  
21 upcoming election?

22 A They described to us the -- the political situation  
23 there.

24 Q Why did they talk to you about it?

25 A They wanted to know if there was anything that we

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1 might be able to do to help describe the status of  
2 the Natchez project and its prospects for future  
3 success.

4 Q And how did you respond?

5 A I declined to do that.

6 Q Why?

7 A First of all, didn't have good -- didn't have  
8 firsthand knowledge; and secondly, that wasn't our  
9 role. In other words, had they asked me about how  
10 the credit was evolving on this transaction, I  
11 probably would have been able to provide that. But  
12 questions on Natchez, I -- I didn't know.

13 Q After that meeting, were there any other Stifel  
14 visits to the tribe?

15 A Not that I'm aware of.

16 Q Did you ever go back?

17 A No.

18 Q Do you know whether Mr. Shibilski did?

19 A No. I mean I may have been on the reservation  
20 driving through. I got other clients in northern  
21 Wisconsin and --

22 Q You didn't go specifically for a meeting?

23 A I didn't go there, that's right.

24 Q How long after that fall meeting did Stifel and  
25 Kevin Shibilski part ways?

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1 A I'm not sure. I did not manage that personnel  
2 change. It was more than a year.

3 Q It was sometime in '09?

4 A '09 or early '10, early 2010.

5 Q Do you know why he left?

6 A His position was terminated. Stifel public  
7 finance -- Stifel public finance presence in  
8 Wisconsin was reduced significantly to the point  
9 where they took us down to -- there were two of us  
10 that maintained that presence after that decision  
11 by management. I believe it was in 2010. Kevin  
12 and Paul had been -- were offered severance  
13 packages. It was a layoff.

14 Q Do you know what Mr. Shibilski is doing now?

15 A No, I don't.

16 Q You did speak to him in preparation for today?

17 A I did.

18 Q What did you talk about?

19 A Huh?

20 Q What did you talk about with Mr. Shibilski?

21 A We talked about the -- again, about the meetings of  
22 the 29th and the -- and again, the September  
23 meeting, and I just wanted to make sure that I -- I  
24 was asking Kevin is there something that he  
25 remembered that I didn't because it's not the kind

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1 of thing you take a lot of notes on in anticipation  
2 that you're not going to have substantial recall.  
3 But we talked about his involvement during this  
4 period of time.

5 Q I think you mentioned earlier that back at the time  
6 that this bond deal was being negotiated and  
7 consummated, it might have been appropriate for  
8 Stifel -- people in Stifel's position to give  
9 financial advice, correct?

10 A Yeah, it might have been.

11 Q Even in the absence of a written agreement, right?

12 A At that time, yes.

13 Q As a placement agent or initial purchaser, would  
14 Stifel -- if that were the relationship, would  
15 Stifel still be able to give financial advice to a  
16 participant in the transaction?

17 MR. CLARK: Could you repeat the  
18 question, please?

19 (Record read.)

20 THE WITNESS: We would have that ability.

21 BY MR. HANSEN:

22 Q There would be no prohibition on that as far as  
23 you're concerned?

24 A Prohibition as referring to legal prohibition?

25 Q Would there be any regulatory prohibition on

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1 serving as both a placement agent in a transaction  
2 and providing financial advice to a participant in  
3 the transaction?

4 A Not at that time.

5 Q Would there have been any internal policy at Stifel  
6 that would have prohibited that placement agent and  
7 financial advisor role?

8 A No.

9 Q Would it have been appropriate as a placement agent  
10 and initial purchaser to try to encourage a party  
11 to the bond transaction to execute the bond  
12 transaction?

13 MR. TUREK: Once again, can you read that  
14 back?

15 (Record read.)

16 THE WITNESS: Yes.

17 BY MR. HANSEN:

18 Q Is that because Stifel would have an interest in  
19 the financial outcome of the transaction?

20 A That would be one reason.

21 Q What would be the others?

22 A There's reputation. We have more than one customer  
23 at the table here. Our reputation with Saybrook to  
24 bring a transaction to a positive conclusion was  
25 important to us as well.

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1 MR. HANSEN: Let's take five, 10 minutes.

2 All right?

3 MR. TUREK: Sure.

4 (Discussion off the record.)

5 BY MR. HANSEN:

6 Q I want to return briefly to [Exhibit 22](#) at the  
7 bottom of page 13, top of page 14. We were talking  
8 about -- we talked about it a little before which  
9 is Mr. Shibilski's statement securing the debts of  
10 a positive arbitrage which is greater interest than  
11 you're paying going back to the tribe as well as \$1  
12 million.

13 I don't want to ask you about the  
14 truth or falsity of that question. I just want to  
15 understand that is an on-reservation statement made  
16 by Mr. Shibilski, correct?

17 A He was present on the reservation.

18 Q And did he make that statement about arbitrage in  
19 his capacity as a placement agent on behalf of  
20 Stifel Nicolaus?

21 MR. TUREK: I'll just object for  
22 foundation.

23 THE WITNESS: That is the reason he was  
24 at the meeting. He was -- because the items on the  
25 agenda that we were being -- that we wanted to be

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1 prepared to discuss were items that related to this  
2 transaction, and our role in this transaction was  
3 as the placement agent.

4 BY MR. HANSEN:

5 Q And Stifel, does it stand by that statement?

6 MR. TUREK: Objection, outside the scope.  
7 I instruct him not to answer that.

8 MR. HANSEN: You're instructing him not  
9 to answer whether Stifel stands by the statement  
10 that was made on the reservation?

11 MR. TUREK: Correct.

12 MR. HANSEN: What's the basis for  
13 instructing him not to answer?

14 MR. TUREK: I don't think it has anything  
15 to do with the jurisdictional analysis.

16 MR. HANSEN: On-reservation conduct by a  
17 Stifel representative does not have anything to do  
18 with jurisdiction --

19 MR. TUREK: Sure, but the truth and  
20 falsity of it doesn't which is the root of your  
21 question is do we still stand by it.

22 BY MR. HANSEN:

23 Q My question is, was it appropriate for Kevin  
24 Shibilski serving as Stifel's -- as a placement  
25 agent on behalf of Stifel to make that statement?



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1 A He was answering a question posed by a customer.  
2 We typically will sometimes -- I'm trying -- we  
3 tried to be responsible to our -- responsive to our  
4 customers' inquiries. So to that extent, he was  
5 responding to the question that Vicky Doud -- the  
6 question that Vicky Doud asked him.

7 Q On page -- hang on a second.

8 (Discussion off the record.)

9 BY MR. HANSEN:

10 Q What was the open-ended question that you thought  
11 that Vicky Doud asked that gave rise to Mr.  
12 Shibilski's --

13 A She said I think it would be worth it to go through  
14 the operations. I'm not sure I understand the  
15 context of that, but clearly she was -- whether she  
16 made some -- Kevin interpreted that as being an  
17 invitation and introduction for him because his  
18 immediate response was, "Thank you, Madam  
19 President."

20 So the context and perhaps the body  
21 language or whatever else that doesn't go through  
22 in the transcript was that Kevin interpreted  
23 Vicky's statement as being an introduction to bring  
24 something forward that was being requested.

25 Q If you look at page 10, the last two lines, 23 and

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1           24, Brian Pierson of Godfrey is saying there are  
2           political questions and legal questions. And then  
3           it continues -- his statement continues on to page  
4           11.

5                       At the bottom of page 11, lines 22  
6           to 24, Brian Pierson says,

7                       "As far as the flow of funds and  
8           where it goes, Kevin" -- referring to Kevin  
9           Shibilski -- "I think you can provide a better  
10          education of that."

11   A       Yes.

12   Q       And I believe there's a little --

13   A       Um-hum.

14   Q       That really is what Kevin Shibilski is responding  
15          to which is the flow of funds. That's what Kevin  
16          is going to talk about.

17   A       Okay.

18   Q       And so that flow of funds, that was made by  
19          Mr. Shibilski in his capacity as placement agent?

20   A       Yeah. Because at that point he's talking about the  
21          purposes for which the bond proceeds would be  
22          expended. We made a disclosure on that, an  
23          offering memorandum. There are certain disclosures  
24          on that -- references to that made in other  
25          documents as well.

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1 Q And that would include the positive arbitrage?

2 A Yeah, that would include at that point that there  
3 was a loan being made down to Natchez with  
4 payments -- under terms that would create  
5 additional interest -- net interest income back to  
6 the tribe.

7 Q So Stifel was aware that Grand Soleil-Natchez was  
8 going to begin to cash flow?

9 A Yeah. Well, no. We were aware that a loan had  
10 been made from the tribe to Grand Soleil-Natchez.  
11 We were never engaged in any respect to do a credit  
12 analysis of Grand Soleil-Natchez. So we never  
13 rendered an opinion as to Grand Soleil-Natchez's  
14 ability to make payments under that loan.

15 Q So if you turn to page 27, lines 12 through 17,  
16 this is Mr. Shibilski speaking.

17 "Is there risk? No question.  
18 There's always risk in a business venture, but  
19 there is substantial positive profit margin in your  
20 operation in Mississippi, and that's what's given  
21 the debt that the bond buyers comfort here. So  
22 there is no question about that."

23 Isn't Kevin Shibilski there talking  
24 about profit margin on Grand Soleil-Natchez's  
25 project?

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1 A That's what he appears to be talking about, yes.

2 Q Where did Stifel get that information?

3 A To my knowledge, Stifel didn't have that  
4 information.

5 Q So is Kevin Shibilski making this statement on  
6 behalf of Stifel as bond placement agent?

7 A I don't know where Kevin got that information.

8 He makes representations --

9 MR. TUREK: There's no question.

10 THE WITNESS: There is no question.

11 You're right.

12 BY MR. HANSEN:

13 Q Any time you'd like to speak, feel free.

14 A I understand.

15 Q What were you going to say?

16 A That there's a factual misstatement here by Kevin  
17 that the bond buyers, which if it refers to the  
18 purchase of Saybrook, the investor in these bonds,  
19 was taking comfort in the Natchez's ability to make  
20 loan payments to the EDC, that that is not an  
21 accurate description of this -- of the bond  
22 transaction.

23 Q Page 28, line three. Kevin Shibilski is speaking.  
24 Why don't you read just to yourself lines three  
25 through 13.

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1 MR. CLARK: What page?

2 MR. HANSEN: Page 28, lines three through  
3 13.

4 THE WITNESS: Okay.

5 BY MR. HANSEN:

6 Q I'll paraphrase, but essentially Mr. Shibilski  
7 there is talking to the tribe and the EDC about the  
8 fact that the tribe has secured debt at Grand  
9 Soleil-Natchez?

10 A I don't believe that's what that's referring to.

11 Q What do you think it refers to?

12 A I think --

13 MR. TUREK: Objection, foundation. Go  
14 ahead.

15 THE WITNESS: The word that's in the  
16 transcript as redunning component I believe refers  
17 to the refunding component of the --

18 BY MR. HANSEN:

19 Q Of what?

20 A Of the bonds.

21 Q So --

22 A And the bonds were in fact secured.

23 Q So you're saying that here Mr. Shibilski is talking  
24 about grabbing liens on everything you can, real  
25 estate, projected cash flow, guarantees, personal

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1           guarantees, those are things that -- he's  
2           describing the security under the bond transaction?  
3       A     If the refunding component refers to that, yes, and  
4           he's -- he's responding to Brian, who I assume is  
5           Brian Pierson. Again, Brian Pierson had no role  
6           that I'm aware of in the loan from the EDC down to  
7           Natchez.

8                               He did have a role in the refunding  
9           component for the bonds, so I understand that what  
10          he's referring to is the -- he's trying to --  
11          referring to just a security for the bonds, but  
12          it's not clear.

13       Q     Then 14 and 15 maybe on that same page will clear  
14           it up where Brian Pierson of Godfrey says,

15                               "You were talking about the loan  
16           being made by the FDC to the LLC?"

17                               And on 16 Kevin Shibilski answers,  
18                               "To the LLC, that's right."

19                               Does that make it more clear that  
20          what Mr. Shibilski is talking about in lines three  
21          through 13 really refers to the transaction between  
22          the tribe or the EDC and the Grand Soleil-Natchez  
23          project?

24       A     That was his response to Brian Pierson's question.

25       Q     So was Kevin Shibilski making these on-reservation

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1 representations to the tribe and the EDC in his  
2 capacity as Stifel's placement agent or in his --  
3 on behalf of Stifel as placement agent?

4 A That is the reason that he was instructed to attend  
5 the meeting.

6 Q Did you know about all of these liens and cash flow  
7 and personal guarantees in the Grand Soleil-Natchez  
8 project?

9 A No, I didn't know how the loan to Grand Soleil was  
10 being secured. I knew there was an arbitrage play.  
11 But again, because we were not pledging any  
12 proceeds to that loan, it was immaterial to our  
13 description in the bond transaction other than  
14 identifying it as an expenditure of bond proceeds.

15 Q Why would Stifel know so much about that loan down  
16 to Grand Soleil-Natchez?

17 MR. TUREK: Objection, foundation,  
18 misstates prior testimony. Rests on evidence not  
19 in the record. You can answer if you know.

20 THE WITNESS: No, that's it. I did not  
21 have this type of information on the loan from --  
22 from Lac du Flambeau down to Natchez, those terms.

23 BY MR. HANSEN:

24 Q But Stifel in general did. Maybe you personally  
25 didn't, but Stifel would have known?

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1 A Not in general. It appears from this that Kevin  
2 had information.

3 Q That Stifel didn't know about?

4 A Stifel doesn't know the middle names of my  
5 grandchildren either. There's information that  
6 individual employees of Stifel know that the  
7 corporation or Stifel Nicolaus doesn't know.

8 So I'm telling you, I did not know  
9 everything that apparently Kevin was discussing  
10 with regard to this transaction. And I can tell  
11 you that Stifel did not know those things either.

12 Q Page 32, lines 10 through 14 -- eight through 14.  
13 Do you know -- Muriel Fralick is speaking at line  
14 eight. She says,

15 "So we need to borrow \$20 million so  
16 they will give us a kickback of \$1 million."

17 Do you know who Muriel Fralick is?

18 A I do not.

19 Q Safe to assume she's a member of either the EDC  
20 board or the tribal council?

21 A Or she could have been in the audience. I don't  
22 know.

23 Q 10 through 14 Kevin Shibilski says,

24 "Many more millions than that. You  
25 have a 1.5 percent positive arbitrage, so you may



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1 get something like \$3 million a year."

2 Line 13, Muriel Fralick says,

3 "Some day?"

4 At line 14 Kevin Shibilski says,

5 "No, no, no, immediately."

6 Do you see that?

7 A Yep.

8 Q What's he referring to there?

9 A I don't know. It appears that she was trying to do  
10 math on the fly, and clearly she didn't reach one  
11 and a half percent positive of \$20 million is  
12 300,000, not three million.

13 And so -- but I assume that his --  
14 his inability to properly do the math, I think  
15 that's what -- he was trying to come up with a  
16 dollar value that represented the value of a one  
17 and a half percent positive arbitrage on  
18 \$20 million.

19 Q When did Stifel do the analysis on the level of  
20 cash flow that would be generated by Grand  
21 Soleil-Natchez?

22 A We did not.

23 Q So for these on-reservation statements by  
24 Mr. Shibilski in that regard, what Stifel  
25 information was he relying on when he said it?

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1 A I don't know.

2 Q Was the on-reservation statement made in his  
3 capacity as a placement agent?

4 A That was why he was there.

5 Q Are those the types of -- is that the type of  
6 information that Stifel asks its placement agents  
7 to provide?

8 A I don't understand the question. Stifel is the  
9 placement agent.

10 Q Does Stifel expect its representatives like  
11 Mr. Shibilski when they're serving as a  
12 representative of Stifel as a placement agent to  
13 provide that type of information?

14 A We ask them to be responsive to questions. And to  
15 the extent that that was a question and answer that  
16 Kevin believed he had the ability to answer, he  
17 did.

18 Q At page 61, lines two through seven, Kevin  
19 Shibilski says,

20 "The consequences are to no action.  
21 You will absolutely kill the project, and you know,  
22 I'm not your business advisor, but I think that  
23 anybody who walked into this room would know that  
24 you would instantly endanger or jeopardize your  
25 money invested so far."

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1 Do you see that?

2 A I see that.

3 Q Is Kevin Shibilski making those on-reservation  
4 statements in his capacity as bond placement agent?

5 A Again, he was representing our position in the bond  
6 purchase agreement, and that's why he was sent to  
7 that meeting.

8 Q What's the purpose of that statement? What bond  
9 purchase agent interest does that advance?

10 A I don't know.

11 Q But he was there as the bond placement agent?

12 A Um-hum.

13 Q So --

14 MR. TUREK: Is that a yes?

15 THE WITNESS: That's correct.

16 BY MR. HANSEN:

17 Q But you don't know why as a bond placement agent  
18 that statement would be made?

19 A The statement would be made because we want to be  
20 responsive to clients' questions. It appears in  
21 the previous -- previous page that it was Brian  
22 Pierson who was speaking prior to that.

23 But yeah, he would be -- he's  
24 drawing conclusions that would be outside the scope  
25 of our normal -- our role as placement agent.

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1 Q You would never say this, would you?

2 MR. TUREK: Objection, irrelevant.

3 THE WITNESS: I wouldn't use those words.

4 BY MR. HANSEN:

5 Q Do you know what research Stifel would have done to  
6 provide the information to Kevin Shibilski so they  
7 could make these representations on the  
8 reservation?

9 A No.

10 Q Do you think Stifel did any research or  
11 investigation to help Mr. Shibilski make these  
12 representations?

13 A Can I hear that again?

14 (Record read.)

15 THE WITNESS: No, we did not.

16 BY MR. HANSEN:

17 Q Page 83, lines 11 to 20. It's kind of long, so  
18 I'll just let you read that to yourself and just  
19 let me know when you're done, please.

20 MR. CLARK: Sorry, what was the page?

21 MR. HANSEN: Page 83, lines 11 through  
22 20.

23 THE WITNESS: Okay.

24 BY MR. HANSEN:

25 Q You see it's Kevin Shibilski talking about the

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1           tribe being 50/50 partners with Bill Bayba,  
2           correct?

3       A     That's what he said.

4       Q     He says at line 19 and 20,

5                       "You should know that, too. You  
6           have a very good partner, Mr. Bayba."

7                       Does Stifel often act as a placement  
8           agent and get into this level of detail and  
9           knowledge about --

10      A     No.

11      Q     On page 84, lines 11 through 14. Again, this is  
12           Kevin Shibilski,

13                      "You are going to ruin not only your  
14           project, but you're going to ruin your partner's  
15           project if you do nothing. That's a fiduciary  
16           fact, and I'm obliged to tell you that."

17                      Did placement agents typically  
18           make -- what obligation was Stifel under to tell  
19           the tribe that?

20      A     Under no obligation.

21      Q     How did Stifel even know that? How did Stifel know  
22           that failing to commit to the bond transaction  
23           would ruin the Grand Soleil project and ruin Bill  
24           Bayba's project?

25      A     We were aware that the contractors on the Grand

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1       Soleil project were threatening to stop work  
2       because of late payments on their invoices. I was  
3       catching phone calls from -- in one case catching a  
4       phone call from a bank that actually begged one of  
5       the contractors wanting to know when his customer  
6       can expect payment.

7               I gave him the timing of the  
8       transaction that we were working with at that time  
9       and the budget of the transaction we were working  
10      with at that time, and I said, you know, this  
11      project is -- I don't remember what status it was  
12      at that time.

13              So what I'm saying is we had -- to  
14      that extent we had knowledge that there was  
15      significant financial stress that the project in  
16      Natchez was under. So that is the only facts known  
17      to Stifel that I could indicate would cause -- that  
18      I was aware of that would cause Kevin to indicate  
19      that failure to come up with the funds to keep the  
20      project flowing would essentially close down the  
21      project. He says ruin. Again, that wouldn't be my  
22      choice of words.

23      Q     Did Stifel ever -- knowing that about the Grand  
24             Soleil project, did Stifel ever advise the tribe or  
25             the EDC not to go deeper into the hole in Grand

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1 Soleil?

2 A No. We relayed the information that we were  
3 getting to Saybrook. I was also relaying the  
4 information that I was getting to Rick Lindsley at  
5 the tribe. And they were still in the process of  
6 negotiating the terms -- final terms of this bond  
7 issue.

8 So I felt that information I was  
9 receiving was material, so I relayed it to both of  
10 the parties and let them do with that what they  
11 will as part of their future process in determining  
12 appropriate terms and conditions in this financing.

13 Q Why would that information be material to Saybrook?

14 A Well, because again, Saybrook -- I don't know why.  
15 You had -- there was even a contractor who was  
16 doing work for a -- an affiliate of the tribe who  
17 wasn't getting paid. Was that relationship a  
18 direct security for the bonds? No. But clearly it  
19 does bear on the creditworthiness of one of the  
20 obligors of the transaction. Perhaps not directly.  
21 Perhaps indirectly, but materiality wasn't the  
22 decision I made.

23 My decision was when I got  
24 information like that, it could be material and  
25 I -- and I basically made the information available

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1 to both parties.

2 Q But it didn't work its way into the limited  
3 offering memorandum?

4 A No.

5 Q What did Saybrook do in response to the  
6 information?

7 A They continued on with the project. With this they  
8 did request some provisions. I don't know if it  
9 was responded to this, but subsequently they did  
10 request some provisions that restricted the  
11 distribution of funds down to Natchez until certain  
12 licensure targets were hit.

13 So there was some cognizance of  
14 whether or not -- under what circumstances bond  
15 proceeds should be lent to Saybrook. So Saybrook  
16 did impose itself on essentially the terms of the  
17 loan, if you will, between the EDC and the LLC down  
18 in Natchez because they imposed themselves -- they  
19 had actually approval authority on distribution of  
20 bond proceeds down to Natchez.

21 Again, it wasn't part of that  
22 negotiation. We memorialized it in the documents,  
23 but that is the transaction that finally resulted  
24 was Saybrook developing what they viewed to be some  
25 safeguards on the expenditure of the bond proceeds.



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1 Saybrook never asked for a security interest in  
2 that note though.

3 Q In Stifel's capacity as placement agent, is there  
4 anything about Mr. Shibilski's on-reservation  
5 representations and conduct that Stifel takes issue  
6 with?

7 MR. TUREK: Objection, vague. You can  
8 answer.

9 THE WITNESS: We would have liked him to  
10 be more careful in his responses, but I also  
11 understand that that perhaps wasn't -- Kevin  
12 developed a relationship with all of his clients  
13 for which his informality was an asset and so --  
14 I'll just let it go there. He's responding less  
15 formally than I would have.

16 BY MR. HANSEN:

17 Q But other than the informality of it, Stifel is  
18 fine with how Kevin Shibilski handled himself at  
19 that meeting on January 2, 2008?

20 A I wouldn't say we're fine with it.

21 Q What would you say?

22 A I would say clearly Kevin indicated that there  
23 was -- that he would have required some additional  
24 training. We may have been more selective in the  
25 way it was handled, and clearly had I had access to

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1           this type of information sooner, there would have  
2           been some follow-up conversation with the tribe.

3       Q     What would that conversation have entailed?

4       A     Just trying to clarify what the situation was with  
5           what was the -- what was driving some of these  
6           questions, what was behind them. Again, I wasn't  
7           there. Context is important. I would have clearly  
8           had a conversation with Brian Pierson that I had  
9           not had.

10      Q     What about -- what would you like to talk to  
11           Brian --

12      A     About this meeting, how he read the situation.

13      Q     But other than some follow-up training or a desire  
14           to help clarify a few things, there's nothing else  
15           about Mr. Shibilski's on-reservation conduct or  
16           statements to Stifel's client that Stifel thinks  
17           are inappropriate or has any other kind of problem  
18           with?

19                       MR. TUREK: I'll object as overbroad.  
20           You got 160-some pages here. Subject to that, go  
21           ahead.

22                       THE WITNESS: Kevin was trying to be  
23           responsive to what the tribe was asking him. He  
24           did it inartfully. He did it without a lot of  
25           experience in bond transactions. You know, without

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1 perhaps a base of knowledge in the documents and  
2 the way this transaction was -- Kevin was not a  
3 credit analyst. Kevin -- he was what he was. He  
4 basically handled -- he was a point man on this  
5 client and other clients.

6 So it's incumbent on us to have our  
7 employees that are representing us parties to a  
8 transaction that they be both -- that they be  
9 knowledgeable both about our role and in all the  
10 details of the transaction, what's material, what's  
11 not. We have to bring people along.

12 At this point I've been in the  
13 business for 25 years. Kevin had been in the  
14 business for five. There was a significant  
15 difference in the way we would have responded to  
16 the questions -- that I would have responded to the  
17 questions from the tribe, but Kevin was trying to  
18 be responsive.

19 BY MR. HANSEN:

20 Q But by trying to be responsive, that doesn't  
21 relieve him of his obligation to be honest, does  
22 it?

23 A No.

24 Q It doesn't relieve him of his obligation not to be  
25 negligent when he's representing Stifel, right?

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1 A No.

2 Q It doesn't relieve him of his obligation to follow  
3 the code of professional conduct, correct?

4 MR. TUREK: Objection, vague, assumes  
5 facts not in evidence.

6 THE WITNESS: I guess I'm not sure what  
7 code you're referring to. We're in a business  
8 governed by rules of the Municipal Securities  
9 Rule-Making Board promulgated through delegated  
10 authority from the Securities Exchange Commission.

11 One of those rules requires us to  
12 deal with all parties to our transaction fairly. I  
13 think Kevin was dealing with all parties here  
14 fairly; inartfully perhaps, but fairly.

15 BY MR. HANSEN:

16 Q Even though he was a direct recipient through his  
17 position at Big River Enterprises of the bond  
18 transaction proceeds?

19 MR. TUREK: Objection, outside the scope.  
20 No need to answer.

21 MR. HANSEN: Well, he said fairly. He  
22 said Kevin acted fairly. I have a right to follow  
23 up on that.

24 MR. TUREK: Not to that extent, no. I  
25 instruct you not to answer.

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1 BY MR. HANSEN:

2 Q Can you take a look at [Exhibit 19](#) again --

3 A Um-hum.

4 Q -- all the way back to page 18 under Management  
5 Team.

6 A Um-hum.

7 Q It says, The management team will consist of  
8 Emerald Star whose members are Mr. Charles Cato,  
9 Mr. Bill Bayba, William Bayba and a political  
10 subdivision of the tribe.

11 Essentially that's what it says,  
12 right?

13 A Um-hum.

14 MR. TUREK: Yes, Dave?

15 THE WITNESS: Yes.

16 BY MR. HANSEN:

17 Q And for Big River Enterprises, LLC, again, we  
18 talked about this before, Mr. William Bayba's  
19 indicated in parentheses after Big River  
20 Enterprises, correct?

21 A Correct.

22 Q Why isn't -- why didn't Stifel disclose that Kevin  
23 Shibilski was also a member of Big River  
24 Enterprises in this document?

25 MR. TUREK: Objection, outside the scope,

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1 assumes facts not in evidence. I'm going to  
2 instruct the witness not to answer.

3 THE WITNESS: Okay.

4 MR. HANSEN: This is a document that he  
5 put together dealing with the bond transaction that  
6 dealt directly with Kevin Shibilski's  
7 on-reservation conduct.

8 MR. TUREK: Where did that come in? I  
9 must have missed that.

10 MR. HANSEN: This is a management team  
11 that's going to run the casino that all the bond  
12 proceeds are going to.

13 MR. TUREK: The one down in Mississippi?

14 MR. HANSEN: Um-hum.

15 MR. TUREK: So what does that have to do  
16 with contact with a tribal entity in Wisconsin --  
17 you're saying now that Mississippi --

18 MR. HANSEN: No. This relates to  
19 statements or omissions that Kevin Shibilski made  
20 on behalf of Stifel at the reservation.

21 MR. TUREK: I don't -- I guess I didn't  
22 see that in the transcript if anyone asked him what  
23 roles he held in entities as part of the  
24 transcript. I'll also go back to the fact I don't  
25 think this is relevant to Montana one or Montana

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1 two under the nature of the tribal court action, so  
2 I'm going to instruct him not to answer that.

3 BY MR. HANSEN:

4 Q Turning back briefly to [Exhibit 22](#) at page 137,  
5 lines three through seven. Are you there?

6 A Yep.

7 Q Muriel Fralick asks,

8 "May I just ask what our monthly  
9 fees will be on that 50 million?"

10 Kevin Shibilski answers,

11 "The net effect is that you will  
12 have cash. The debt will be at the same rate you  
13 are at now plus you get \$1 million."

14 Do you see that?

15 A Um-hum.

16 Q Do you know what he's talking about there?

17 A No.

18 Q Was that a calculation that Stifel ran?

19 A No.

20 Q Is that based on information that Stifel provided  
21 to Mr. Shibilski as part of Mr. Lehky's analysis,  
22 for example, the casino revenue?

23 A We were well beyond a Lehky analysis by  
24 January 2nd. The transaction was in -- the terms  
25 of the transaction hadn't been finalized at that

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1 point.

2 Q So what's the basis for the statement that the  
3 tribe will have cash and \$1 million?

4 A I do not know.

5 MR. CLARK: Excuse me, what page are we  
6 on now again?

7 MR. HANSEN: 137, lines three through  
8 seven.

9 BY MR. HANSEN:

10 Q Those are not the kind of things that a placement  
11 agent would normally tell bond issuers, are they?  
12 Isn't Kevin Shibilski just giving financial advice  
13 to the tribe?

14 A He's answering a question from Muriel Fralick.

15 Q Does Stifel stand by that answer?

16 A The reference to the same rate, I don't know about  
17 the other rate, but if he's referring to the rate  
18 that they were currently paying on the debt that  
19 was refunded, the new transaction increased the  
20 interest rate. It was not at the same rate.

21 Again, he doesn't refer to the  
22 interest rate either. He refers to rate. I don't  
23 know what he's referring to there.

24 Q We talked a little bit about Stifel Financial and  
25 Stifel Nicolaus, and I think you said Stifel



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1 Nicolaus is a wholly owned subsidiary of Stifel  
2 Financial.

3 A That's correct.

4 Q Does Stifel Financial control and manage Stifel  
5 Nicolaus or is it -- is Stifel Financial a holding  
6 company and Stifel Nicolaus operates more or less  
7 independently?

8 A Stifel Nicolaus is a wholly owned subsidiary of  
9 Stifel Financial. Stifel Nicolaus is the licensed  
10 broker/dealer. It is that entity that engages in  
11 those broker/dealer activities.

12 The supervisory structure is as a  
13 result performed by licensed individuals  
14 supervising other licensed individuals.

15 Q When you talked to Mr. Shibilski in preparation for  
16 your deposition today, did you ask him at all about  
17 [Exhibit 22](#), the transcript we've been talking  
18 about?

19 A I did not.

20 Q You were aware of the transcript before you talked  
21 to Mr. Shibilski, correct?

22 A I was.

23 Q And weren't you curious to hear what he'd have to  
24 say about it?

25 MR. TUREK: Objection, relevance. You

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1 can answer.

2 THE WITNESS: No. I mean, I knew Kevin  
3 well enough. I look at this, and yeah, Kevin did  
4 the best he could. Kevin was trying to be  
5 responsive to his clients. Kevin was behaving in a  
6 way less formal than perhaps I would have. I'm  
7 sorry I was on January 2nd sitting at home under  
8 the effects of painkillers.

9 MR. HANSEN: All right. I think that's  
10 all I have for right now. Obviously we'll reserve  
11 the right to follow up depending on what happens on  
12 March 14th.

13 But for purposes of the preliminary  
14 injunction hearing, I think I don't have any more  
15 questions today. I don't know if you guys have  
16 any.

17 MR. TUREK: I do have a few questions.  
18 Do any of you have questions?

19 MR. CLARK: No, I don't have any  
20 questions.

21 MR. FINE: You first.

22 EXAMINATION

23 BY MR. TUREK:

24 Q I first want to run through a couple of the  
25 meetings that Stifel attended involving the

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1 transaction. The first meeting that I heard you  
2 discuss was a May -- late May, May 29th meeting, is  
3 that right?

4 A Right.

5 Q Did anyone ask Stifel to attend that meeting?

6 A Yes.

7 Q Who?

8 A Rick Lindsley.

9 Q And who was Mr. Rick Lindsley operating --

10 A Mr. Lindsley --

11 Q Let me finish the question. Who did you understand  
12 that he was acting on behalf of?

13 A On behalf of the tribe. He was the CFO of the  
14 tribe.

15 Q And did Stifel -- I'm sorry, did Mr. Lindsley  
16 invite the Stifel representatives to the tribal  
17 land?

18 A Yes.

19 Q Now, I think the next meeting you mentioned was the  
20 September meeting, correct?

21 A Um-hum.

22 Q And at that meeting is where you presented the  
23 options for investors in the tribe, correct? Maybe  
24 you wouldn't describe it that way.

25 A We had two competing indications of interest in

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1 purchasing bonds from the tribe.

2 Q And for those -- the presentation of those  
3 competing interests, did you present those to the  
4 tribe initially over the phone?

5 A Yeah. I initially had called Rick Lindsley and  
6 outlined for him over the phone what the two  
7 options were, and after a phone -- near the end of  
8 the phone conversation, I frankly asked Rick, what  
9 do you want to do with these? Rick's response was,  
10 I don't have the authority to make that call and --  
11 or words to that effect. He says, you're going to  
12 have to come up and basically talk to other tribal  
13 officials, and so we set a date and a time to do  
14 that.

15 Q Did you take Mr. Lindsley's invitation as a request  
16 to come up to tribal land?

17 A Yes.

18 Q Same thing for the January 2nd meeting. This is  
19 the one we spent a lot of time going through the  
20 transcript on. Was that a meeting attended at the  
21 request of the tribe?

22 A Yes.

23 Q And how was that request communicated, if you know?

24 A I don't know. The timing and the calling of the  
25 tribal meeting at that point we were communicating

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1 almost entirely with the tribe's legal counsel on a  
2 matter like that.

3 So I believe that the -- it would  
4 have been Brian Pierson who worked out the  
5 agreeable timing of that. He was the one that was  
6 responsible, and he and bond counsel at Godfrey &  
7 Kahn, they were the ones that were generating the  
8 documents that required tribal action, so he pretty  
9 much was driving the timing.

10 Q Did someone ask Mr. Shibilski to be there, or did  
11 Mr. Shibilski volunteer to attend himself without  
12 prompting?

13 A Stifel was asked to be there, and I asked Kevin to  
14 attend on our behalf.

15 Q Who asked someone from Stifel to be there?

16 A I believe that that request came from Brian Pierson  
17 at that point, the tribe's legal counsel.

18 Q I want to ask just a couple what may seem like  
19 obvious questions, but I want to understand the  
20 dynamics and the identities of certain parties to  
21 this transaction.

22 A Um-hum.

23 Q Stifel in the bond purchase transaction was the  
24 bond placement agent, correct?

25 A Well, we were identified as the initial purchaser

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1 because this was a placement in which we were  
2 acting as a riskless principal under Section 144 of  
3 the Securities Act, so it was -- we were fulfilling  
4 a placement agent function but we -- on the bond  
5 purchase agreement. The bond purchase agreement  
6 was with Stifel, not directly with Saybrook. The  
7 bond purchase agreement was between the tribe and  
8 Stifel, not between the tribe and Saybrook. That's  
9 the way this transaction was prepared.

10 Q So under this SEC Rule 144(a), Stifel served as the  
11 initial purchaser of the bonds from the EDC?

12 A Yeah.

13 Q And then Stifel resold those bonds to LDF  
14 Acquisition?

15 A Yes.

16 Q And LDF Acquisition is related to what company?

17 A That was the name on the account that was  
18 established by Saybrook for the purposes of closing  
19 this transaction. It was the account that they  
20 established that collected the funds necessary to  
21 buy the bonds.

22 Q So I think what you said earlier is that Stifel was  
23 the initial holder of the bonds upon acquisition  
24 from EDC, correct?

25 A Correct.

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1 Q And then Stifel sold the bonds to LDF Acquisition,  
2 correct?

3 A Correct.

4 Q Did that make LDF Acquisition then the holder of  
5 the bonds?

6 A Yes.

7 Q And who is Wells Fargo bank in this transaction?

8 A They are the trustee of the transaction.

9 Q And what role does the trustee play in this  
10 transaction?

11 A The trustee is the entity that is responsible for  
12 essentially collecting payments of principal and  
13 interest. It's the -- essentially they're  
14 responsible for both monitoring and enforcing the  
15 rights of the bondholders.

16 Q As they relate to collection of money?

17 A Collection of that and -- yeah, there are other  
18 things the trustee does in terms of they may be the  
19 middleman in communicating with bondholders.

20 There are some, for example,  
21 provisions of a bond deal that can be amended after  
22 closing with bondholder consent. The trustee is  
23 normally the one responsible for both soliciting  
24 and collating that consent to make sure there's a  
25 sufficient majority, et cetera.

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1 Q Okay. You may have said this earlier, but what was  
2 Stifel's understanding of why EDC was interested in  
3 issuing the bonds?

4 A This transaction early on was being discussed as  
5 two things. One, their debt was structured in such  
6 a way that they needed -- that they had some  
7 balloon payments coming up that needed to be  
8 refinanced. The -- and they had this project in  
9 Natchez, Mississippi.

10 So the scope of what we are asked to  
11 provide them -- or interview on May 29th, and I  
12 presume Robert W. Baird was given the same request,  
13 was to basically show us how -- what it looks like  
14 if we refinance this debt and how much money can we  
15 raise to support this project in Natchez.

16 Q You were asked some questions earlier about the  
17 mechanics for the transfers of the bonds.

18 A Yes.

19 Q I just want to make sure I understand what you were  
20 describing. Again, Stifel Nicolaus was the initial  
21 purchaser of the bonds, correct?

22 A Correct.

23 Q And does Stifel Nicolaus have an account at this  
24 deposit trust company?

25 A Depository Trust & Clearing Corp, yes. We have an



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1 account with Depository Trust.

2 Q There's a reference in the bonds to a company  
3 called Cede & Co., C-E-D-E & Co. Can you tell us  
4 what Cede & Co. is?

5 A Cede & Co. is a nominee or what's often called in  
6 the nomenclature of our business a street name  
7 that's designated by Depository Trust to identify  
8 investments that they are holding merely in  
9 safekeeping that they don't have an actual  
10 ownership interest in.

11 In other words, they have physical  
12 possession of the bond certificate, but by  
13 registering it in Cede & Co., it distinguishes it  
14 from other investments that they may carry on their  
15 balance sheet that are registered in Depository  
16 Trust & Clearing Corporation. Those are  
17 investments that DTC actually owns. In this case  
18 they are holding the certificate for safekeeping.

19 Q Does Cede & Co. have any substantive rights under  
20 the bonds?

21 A They act as the clearing agent for both bondholder  
22 payments, bondholder communications, but those I  
23 would characterize more as procedural rights than  
24 substantive rights in terms of incidents of  
25 ownership.

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1                   No, Cede & Co. never paid anything  
2                   for any interest in these bonds, and nobody in this  
3                   transaction offered to make them a gift of any  
4                   interest in the bonds.

5     Q     So let me try to isolate some time periods then  
6            here. When Stifel acquired the bonds from the  
7            issuer, DTC, you mentioned earlier that those bonds  
8            were registered in Stifel's account at DTC?

9     A     Um-hum.

10    Q     Was that a yes?

11    A     Yes.

12    Q     What did Stifel do with the bonds? Did they  
13            register their rights in any way?

14    A     Well, we posted the ownership of those bonds to an  
15            inventory account. We maintain accounts for  
16            investments that we hold for our own investment  
17            purposes, also other securities that we hold for  
18            resale to customers. And so once it was in our DTC  
19            account, we posted it to an inventory account at  
20            Stifel.

21                   ([Exhibit 23](#) was marked for  
22                   identification.)

23    BY MR. TUREK:

24    Q     Mr. DeYoung, I have shown you what's marked as  
25            [Exhibit 23](#). Do you have that in front of you?

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1 A I do.

2 Q First off, what is this document?

3 A This is a computer run of at least one page of the  
4 transactions in Stifel's trading inventory account  
5 for January 18, 2008.

6 Q There's handwritten a bracket on the right side of  
7 [Exhibit 23](#). Does that bracket reflect the  
8 transactions that involve Stifel and the bonds on  
9 that date?

10 A Yes.

11 Q You mentioned earlier that Stifel registered the  
12 bonds in their inventory account.

13 Can you tell us where that  
14 transaction is reflected on [Exhibit 23](#)?

15 A The transaction that indicates that there was a  
16 purchase of bonds carrying -- it's hard to describe  
17 because they don't -- 12 percent interest bonds at  
18 98.25 percent of principal, that was the price at  
19 which we bought, and that was the coupon rate of  
20 the bonds that we bought. The principal amount is  
21 designated here at \$50 million.

22 Q Let me just stop you so we're all on the same page.  
23 This and the bracketed entries would be essentially  
24 the bottom two rows?

25 A The bottom two rows, there you go, of the bracketed

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1 entries.

2 Q And can you tell us this inventory account that  
3 Stifel registered the bonds in, what number is  
4 that?

5 A The account number is in this case 00753186.

6 Q And by depositing those in Stifel's account and  
7 registering them there, was Stifel demonstrating  
8 its ownership to the bonds?

9 A Yes. I mean, we don't -- those bonds don't get  
10 posted to us until we've paid for them.

11 Q Now, you described then a transfer -- a sale of the  
12 bonds to LDF Acquisition, correct?

13 A Right.

14 Q Is that transaction reflected on [Exhibit 23](#)?

15 A For that we would look at the top two rows of the  
16 thing, and that is the sale of 50 million bonds at  
17 99. That was the higher -- the price at which we  
18 sold LDF Acquisitions.

19 Q And were then those bonds registered in an account  
20 held by LDF?

21 A Yeah. There's a customer account number associated  
22 with this, so those bonds would have been posted to  
23 the customer account. Again, the customer's name  
24 isn't identified here, but the account is  
25 identified as Account No. 19690389.

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1 Q And in preparing for today's deposition, do you  
2 have an understanding of who controlled that  
3 account?

4 A I've seen monthly statements for that account, and  
5 those statements are addressed to LDF Acquisitions  
6 in care of Saybrook in Santa Monica, California.

7 Q Is that an account that is administered by Stifel  
8 Nicolaus?

9 A Yes. That's a customer account.

10 Q At the point that Stifel had the bonds registered  
11 in its account and before they were sold to LDF,  
12 how would you describe Stifel's role vis-a-vis the  
13 bonds?

14 A Well, during that period of time, we were the sole  
15 bondholder, and clearly we had bought it under the  
16 conditions described in the bond purchase  
17 agreement.

18 Q And if something would have happened during that  
19 period of time that required a holder to execute  
20 some rights, Stifel would have been the party that  
21 would have executed on those rights?

22 A We would have been at that point the only party  
23 that had those rights.

24 Q And if an agreement gives the bondholders from time  
25 to time rights, is it your understanding that that

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1 would include all bondholders current and past?

2 A Yes.

3 Q One last, I think, question.

4 At some point you described Stifel  
5 having multiple customers in this transaction,  
6 correct?

7 A Right.

8 Q And one of those customers was EDC/the tribe?

9 A Correct.

10 Q And then at another point Stifel had two customers  
11 that were potentially interested in becoming a --  
12 in a relationship with the tribe, correct?

13 A Correct.

14 Q And those were Saybrook and then that other  
15 potential investor that we can't remember?

16 A Right.

17 Q And then eventually Saybrook became the investor  
18 who was interested in buying the bonds?

19 A Correct.

20 Q Did Stifel have any kind of agency relationship  
21 with Saybrook, that is principal and agent  
22 relationship with Saybrook or LDF Acquisition?

23 A No. They were just -- they were customers. We  
24 had -- in terms of us being able to act as their  
25 agent on either one of them, no.

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1 MR. TUREK: Those are all the questions I  
2 have. Thanks.

3 MR. FINE: None from me.

4 MR. HANSEN: Jim?

5 MR. CLARK: I don't have any.

6 MR. HANSEN: Let me get just a couple of  
7 real quick follow-ups.

8 EXAMINATION

9 BY MR. HANSEN:

10 Q Do you know whether the tribe or the EDC ever  
11 actually had possession of any of the funds from  
12 the bond proceeds? Did it have an account that  
13 they controlled?

14 A I believe so. There were closing instructions that  
15 distributed the funds. I'd have to review that  
16 document to know -- when you ask about account they  
17 control, yeah, I believe that the trustee was  
18 holding the funds that were designated for --  
19 advanced in Natchez, but I believe the tribe still  
20 had the ability to approve or not approve  
21 distributions out of that account.

22 Q The tribe did?

23 A Yeah.

24 Q And if the documents are in conflict with that  
25 statement, would you agree that you're going from

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1 memory?

2 A I'm going from memory.

3 Q Last question. Did you ever find out -- Rick  
4 Lindsley eventually quit working as the tribal CFO.  
5 Do you know where he ended up?

6 A I don't know where he ended up. No, I do not know.

7 Q Less than no, what do you hear?

8 A I heard that he was working in some capacity for  
9 Bill Bayba in either Wisconsin or Mississippi or  
10 both.

11 MR. HANSEN: All right. Nothing further.

12 MR. TUREK: Nothing from me.

13 (Deposition concluded at 5:15 p.m.)  
14  
15  
16  
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18  
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1 STATE OF WISCONSIN )  
2 ) SS:  
3 MILWAUKEE COUNTY )  
4

5 I, Dawn M. Lahti, RPR, Certified  
6 Realtime Reporter, and Notary Public in and for the  
7 State of Wisconsin, do hereby certify that the  
8 preceding deposition was recorded by me and reduced  
9 to writing under my personal direction.

10 I further certify that said  
11 deposition was taken at 309 North Water Street,  
12 Milwaukee, Wisconsin, on the 3rd day of March,  
13 2014, commencing at 1:05 p.m.

14 I further certify that I am not a  
15 relative or employee or attorney or counsel of any  
16 of the parties, or a relative or employee of such  
17 attorney or counsel, or financially interested,  
18 directly or indirectly, in this action.

19 In witness whereof, I have hereunto  
20 set my hand and affixed my seal of office on this  
21 4th day of March, 2014.

22 \_\_\_\_\_  
23 DAWN M. LAHTI, RPR  
24 Certified Realtime Reporter  
25 Notary Public

My commission expires April 17, 2016.

	134:22	20:14	125:5	73:4
<b>\$</b>	<b>Acquisitions (3)</b>	<b>advisory (6)</b>	<b>agreeing (1)</b>	<b>apart (1)</b>
	72:11;132:18;	17:8,11;18:8,9;	56:4	22:18
<b>\$1 (6)</b>	133:5	19:1,9	<b>Agreement (30)</b>	<b>apparently (1)</b>
83:7,11;95:11;	<b>across (1)</b>	<b>affect (4)</b>	4:14;10:15,23;	104:9
104:16;119:13;120:3	31:8	73:16,17;74:9;	11:2;17:2,17;18:8,9,	<b>appear (1)</b>
<b>\$20 (3)</b>	<b>act (4)</b>	75:16	11,15;19:1,9,17;	76:21
104:15;105:11,18	109:7;126:3;	<b>affects (1)</b>	20:12,20;32:13,16;	<b>Appeared (4)</b>
<b>\$3 (1)</b>	129:21;134:24	73:4	56:21;70:22;71:2;	2:12,16,21;3:5
105:1	<b>acted (2)</b>	<b>affiliate (1)</b>	75:3;76:2;79:7;	<b>appearing (1)</b>
<b>\$375,000 (2)</b>	66:17;116:22	111:16	93:11;107:6;126:5,5,	56:22
56:6;60:6	<b>acting (3)</b>	<b>affirmative (1)</b>	7;133:17,24	<b>appears (5)</b>
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37:21	126:2	<b>affixed (1)</b>	10:18,25;11:12;	105:9;107:20
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<b>ability (6)</b>	<b>acts (1)</b>	<b>after (19)</b>	101:14;114:21	93:7;94:9;96:23;
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<b>able (10)</b>	<b>actually (8)</b>	60:12;78:24;89:25;	88:16	<b>approve (2)</b>
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<b>above-entitled (1)</b>	84:21	27:19;37:19,24;38:2;	<b>along (2)</b>	83:9;84:8,9;95:10,
2:2	<b>additional (3)</b>	50:14;53:24;64:13;	40:24;115:11	18;99:1;103:10;
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4;;39:9;71:6,11,13,	53:16;54:3	86:18	65:16;127:21	39:6;42:9;49:1;
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